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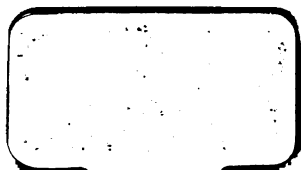
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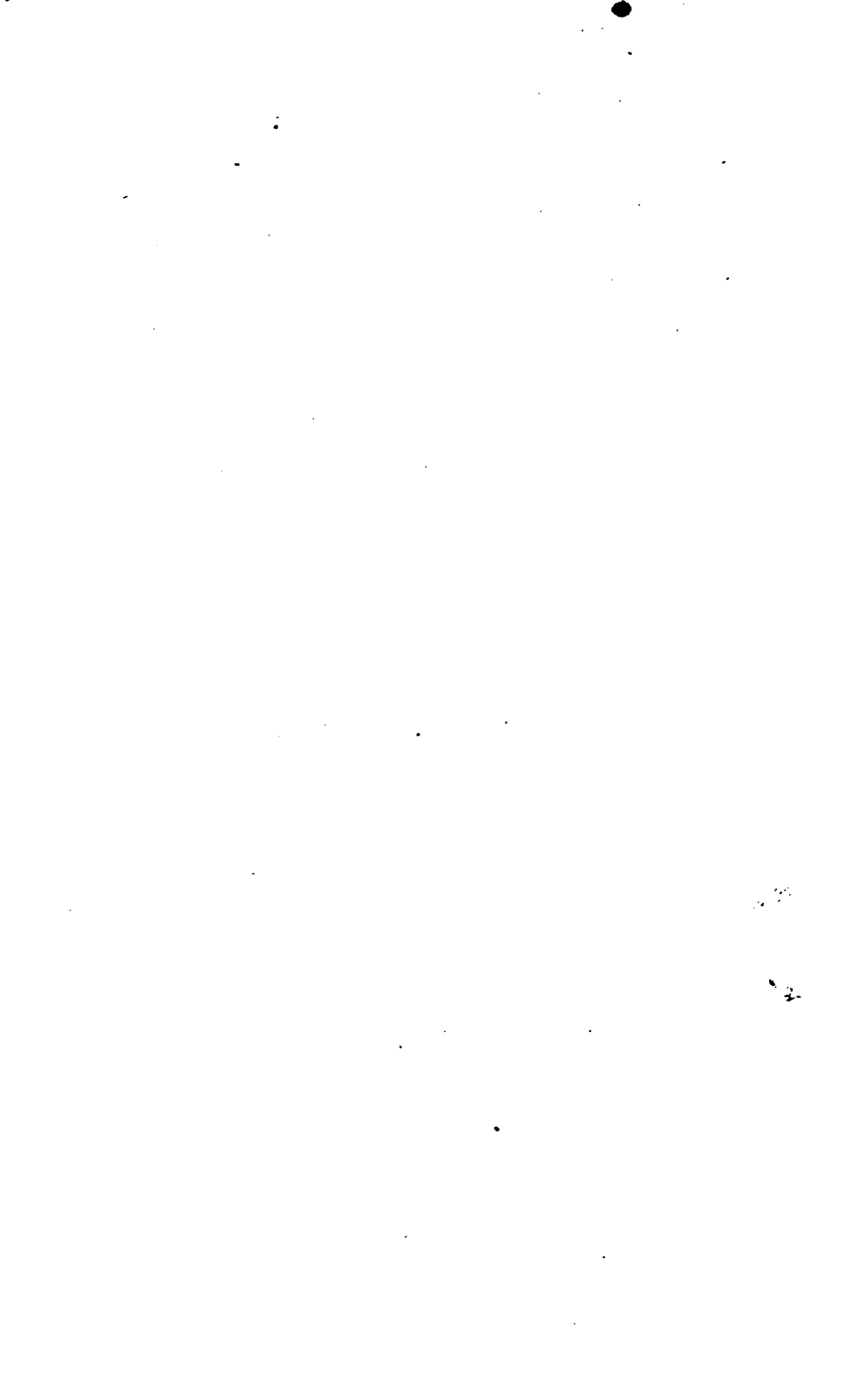
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THE
PARLIAMENTARY ELECTIONS
CORRUPT AND ILLEGAL PRACTICES
PREVENTION ACTS, 1854 TO 1883,

WITH
EXPLANATORY NOTES AND CASES, FORMING A COMPLETE
GUIDE TO THE LAW AND PRACTICE OF
PARLIAMENTARY ELECTIONS,

WITH A
FULL AND COPIOUS INDEX,

AND AN
APPENDIX OF RULES, FORMS AND STATUTES.

BY
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Of Gray's Inn, Barrister-at-Law,
Joint Author of CONYBEARE & ANDREW'S "Married Women's Property Acts."

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PREFACE.

IN the preparation of the following work, the Author has endeavoured throughout to keep in view two main objects : the first, to omit nothing which might be useful in making clear, to the lay as well as the professional reader, the Law relating to Parliamentary Elections as it now stands; the second, to set out all the details of the subject with such fullness, as to avoid, as much as possible, the necessity of constant reference from one part of the work to the other. This method has, indeed, necessitated a certain amount of repetition, but that is, on the whole, a less evil than the loss of time and, it may be added, of temper too, which is the frequent result of having to double backwards and forwards through the pages of a book in search of a particular detail. The idea, which has constantly been present to the Author's mind, is the image of a busy practitioner, candidate, or election agent, who, wishing to ascertain the law on a particular point, opens the volume at the section in question and is at once enabled, without any unavoidable delay, to satisfy himself as to the object of his search. In furtherance of this aim, the Author has been careful to omit from his pages whatever seemed to be, in consequence of the changes in the law, of merely historical interest, his desire being to offer to the public a complete and accurate statement of the law as it now stands.

The difficulty of the task thus attempted is not inconsiderable, and is due, in no small degree, to the somewhat

piecemeal method of legislation which finds favour with Englishmen. Sweeping as are the changes introduced by the New Act, the law upon the whole subject has to be gathered as well from the "Common Law of Parliament" and judicial decisions, as from a variety of statutes, ranging in date from the early years of this century down to the present time, few of which have not at one time or another undergone the process of partial repeal.* Where, when, and to what extent, such repeal has been effected, is often a question of no slight intricacy, as a glance at the fifth schedule, comprising only the enactments now repealed, will suffice to show. And the labour of collecting and piecing together in something like logical order the *dissecta membra* which remain, frequently demands scarcely less ingenuity than the putting together of a puzzle.† Generally, it may be said, a modern Act of Parliament resembles rather the rough marble form which the sculptor has yet to work into a perfect figure, than the finished statue which is already *perfectus ad unguem*. In the present Act, however, there is little to complain of either as to the completeness of its provisions or the skilful manner in which they have been elaborated.

The Author, having accomplished the whole of his task without any assistance, is fully conscious that it may be, and probably is, marked by errors which its careful revision by another eye would more readily have detected. But so far as thorough and careful attention to every

* As a fair sample of partial repeal may be cited the 26 & 27 Vic. c. 29, of which "the whole Act except s. 6" is repealed (p. 323); and s. 6 itself needs alteration to bring it into harmony with the new Act (p. 270).

† Sometimes the repeal of a few lines of a particular section of an Act is found embedded in a Statute Law Revision Act, as was the case with two sections of the P. E. Act, 1868 (see pp. 364-5), which fact seems to have eluded hitherto the attention of the most careful editors.

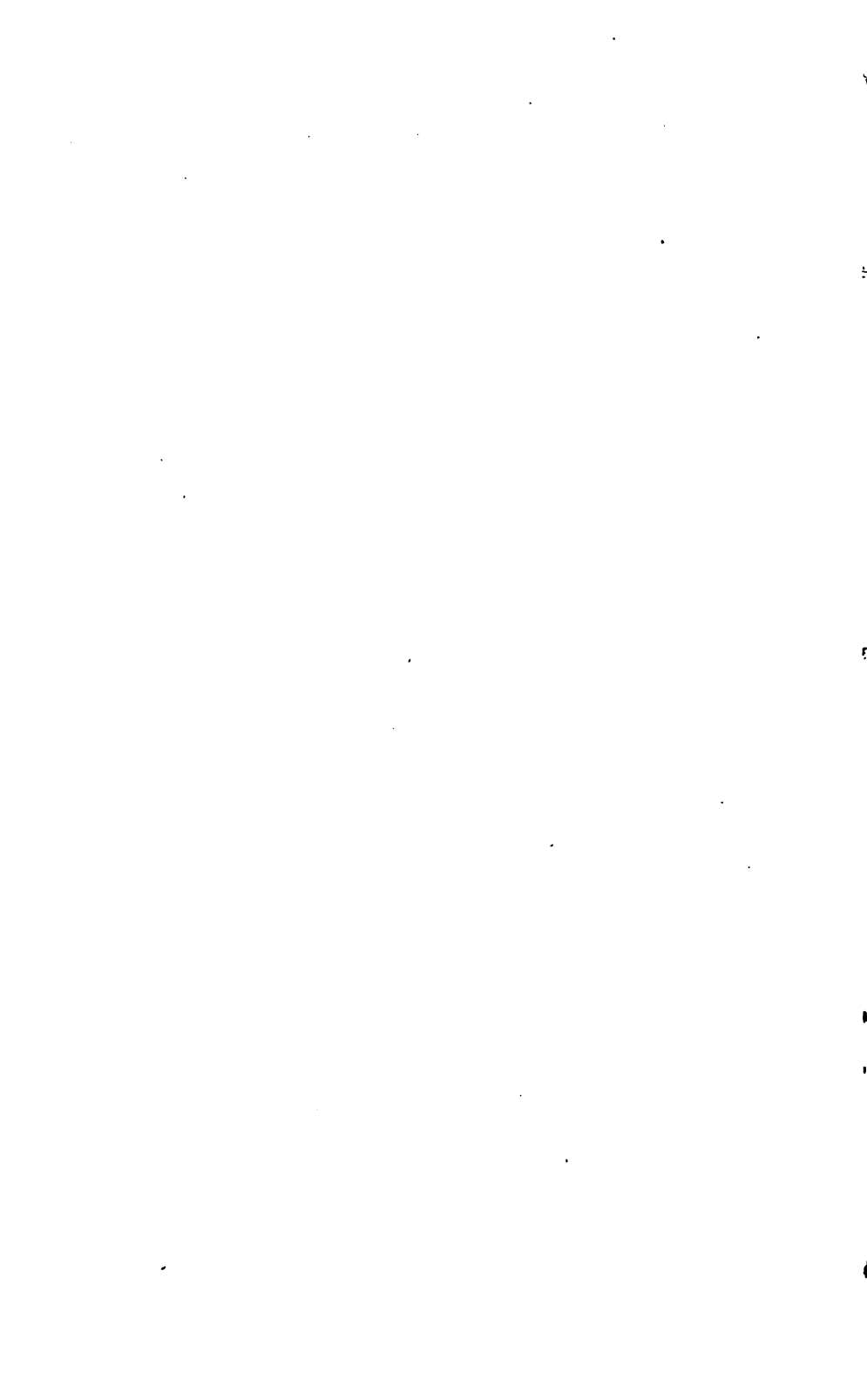
detail could avail, he trusts to have secured himself against blemishes of a serious nature. The fact, however, of being single-handed, along with other circumstances, has delayed the publication of his work, which was commenced in the year 1882, longer than he could have wished. On the other hand, this enforced postponement in its appearance has given the Author the advantage of perusing, during the course of his work, the various other editions of the Act which have already been issued. And he has pleasure in acknowledging the assistance he has derived from those prepared by Mr. Hobhouse and by Messrs. Mattinson & Macaskie, not only in his attention being drawn to matters of detail which might otherwise have escaped him, but also in that they enabled him to guard against errors, which he might easily have fallen into.

40, CHANCERY LANE,
January, 1884.



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ABBREVIATIONS, &c., WITH DATES OF REPORTS.

1834-1841 ...	A. & E.	Adolphus and Ellis' Reports.
1834-1846 ...	B. & Ar.....	Barron and Arnold's Election Reports.
1842 ...	B. & Aus. ...	Barron and Austin's Election Reports.
1822-1830 ...	B. & C.	Barnewall and Cresswell's Reports.
1861-1869 ...	B. & S.	Best and Smith's Reports.
1822-1834 ...	Bing.	Bingham's Common Pleas Reports.
1746-1780 ...	Wm. Bl,.....	William Blackstone's King's Bench Reports.
1757-1771 ...	Burr.	Burrow's Reports.
1796-1797 ...	Clif.....	Clifford's Southwark Election Cases.
1845-1856 ...	C. B.	Common Bench Reports.
1819 ...	C. & D.	Corbett and Daniell's Election Cases.
	Coke	Coke's Institutes.
Ed. 1880 ...	Cunn.	Cunningham on Elections.
1700 ...	Dalton	Dalton's Office of Sheriff.
1774-1776 ...	Doug.	Douglas' Election Cases.
1852-1858 ...	E. & B.	Ellis & Blackburn's Reports.
1847-1866 ...	H. L. C.	House of Lord's Cases.
	Hans.	Hansard's Parliamentary Debates.
	I. R., C. L....	Irish Reports, Common Law.
	Journ.....	Journals of the House of Commons.
1854-1862 ...	K. & G.	Keane and Grant's Registration Cases.
1834-1835 ...	K. & O.	Knapp and Ombler's Election Cases.
	Lamb,.....	Lambard's Justice of the Peace.
	L, J.	Law Journal Reports.
From 1865 ...	L. R.	Law Reports.
	L. T.	Law Times Reports (New Series).
1772-1774 ...	Lofft	Lofft's King's Bench Reports.
Ed. 1883 ...	May.....	May's Law and Practice of Parliament.
1831-1844 ...	M. & R.	Moody and Robinson's Nisi Prius Reports.
From 1869 ...	O. & H.	O'Malley & Hardcastle's Election Reports.
1771-1805 ...	Peck.	Peckwell's Election Cases.

1833	... P. & K.	Perry and Knapp's Election Cases.
1848-1856	... P. R. & D. ...	Power, Rodwell and Dew's Election Cases.
	Pr. Min.	Printed Minutes of Election Cases.
Ed. 1880	... Rog.	Roger's Law of Elections.
1785-1800	... T. R.	Term Reports (Durnford & East).
1789-1816	... Ves.	Vesey's Chancery Reports.
1859-1865	... W. & B.	Wolverstan and Bristowe's Election Cases.
1857-1858	... W. & D.	Wolverstan and Dew's Election Cases.
	W.R.	Weekly Reporter.

C. P. Acts	Corrupt Practices Prevention Acts.
M. C. Acts	Municipal Corporations Acts.
P. E. Act	Parliamentary Elections Act, 1868.
R. P. Act	Representation of the People Act.
S. J. Act	Summary Jurisdiction Act.

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THE
CORRUPT AND ILLEGAL PRACTICES
PREVENTION ACT, 1883.

THE urgent necessity of a measure for repressing actual corruption, and curtailing the unnecessary and extravagant expenditure at Parliamentary Elections, has been, ever since the General Election of 1880, so generally admitted, that the principle of the present Act was never seriously opposed during its passage through Parliament. As the Attorney-General said on the second reading of the Bill, "When the summer and autumn of 1880 had closed, when the country knew there had been electoral corruption, which seemed to increase as the constituencies grew in size, when it was found that that corruption had been applied to that portion of the constituencies not long existent—he meant those men who had been lately enfranchised, and whose poverty rendered them an easy object to those who wished to corrupt—there was a general feeling that some steps must be taken by the

legislature to prevent the spread of corruption at elections. There was another evil too that was disclosed, and which had to be met. The returns obtained showed that the increased expenditure at elections was an evil almost as great in its effect as the evils of direct corruption.”*

That this lavish extravagance, which was emphatically condemned by Sir Henry James as “the father of corruption,” is wholly unnecessary, was abundantly proved by the returns quoted from various constituencies. Thus in Hackney, with upwards of 44,000 electors, the expenditure of the two successful candidates amounted to only £914. In Herefordshire the Liberal candidate won the seat with 2,726 votes, on a register of 8,222 electors, at an expenditure of only £296; and South Northumberland (a constituency of 8,800 electors) was won with an outlay of £1,004 only. If these figures are compared with the amounts which will be permitted in those constituencies respectively, under Schedule I. Part IV. of the new Act,† it will at once be seen that the figures in each of those successful contests fall considerably short of what will henceforth be the legal maximum. In fact, Sir Henry James stated on the second reading of the Bill in the Session of 1882, that he could name 35 borough constituencies, the successful candidates for which had been able to conduct their elections for an expenditure much less than that specified in the Bill.

The secret of that success was, as the Attorney-General at the same time pointed out, that instead of employing

* Hansard, vol. 270, 1,607.

† See table of expenses at p. 306.

armies of paid agents, who "set an example of corruption and were the means of corrupting others,"* the candidates relied on the volunteer efforts of their supporters animated by enthusiasm for their cause.

It is this principle which (it may be said) the Corrupt Practices Act of 1883 is intended, as far as possible, to embody. During the debates in Parliament it was more than once declared to be the intention of the framers of the Bill to do away with the old system of electioneering, and establish an entirely new order of things, under which as much of the actual election work as possible shall be left to voluntary effort.†

Another eminently salutary principle which it embodies is that of fining the delinquent constituency, by saddling it with heavy costs, if corrupt practices have extensively prevailed (s. 44). This practice is, after all, but a return to a time-honoured precedent. For in the earliest recorded case of punishment for bribery, "the House inflicted a fine on the borough of Westbury for receiving a bribe of £4 from one Thomas Long."‡ None will deny the justice of such a course, but it suggests also the question which contains the most probable solution of the whole problem, why the constituencies themselves should not, in the first instance, bear the cost of returning their members to Parliament. Members *serve* their constituents, and their duties are sufficiently onerous, if honestly fulfilled. Why, in addition to such sacrifice of time, and often of health, they should be compelled to pay even the comparatively

* Hansard, vol. 308, 1,342.

† Hansard, vol. 268, 1,343-1,346, and vol. 270, 1,698.

‡ In 1571. See "Taswell Langmead's Const. Hist. p. 432.

moderate sums to be permitted under the new Act, it is difficult to see, while a system, under which it would be the interest of every constituency to aim at returning its members at the smallest possible cost, has certainly much to recommend it. Until, however, public opinion is ripe for that step, the surest ally of a measure such as the present will probably be found in the extinction of small, separate boroughs, and the substitution for these hot-beds of corruption of constituencies far greater in extent, and therefore less accessible to mean and corrupting influences. Those who are wont to lament that, with the disappearance of the pocket borough, the glory of the English Parliament has departed, may perhaps find some consolation in the fact that similar complaints found utterance as far back as the days when the first Resolution against Treating was passed.*

It is possible that even this attempt may not be immediately successful; and that nothing will avail but the purification of the political atmosphere in the constituencies, which time alone can bring about. But even so, this Act will be found to have done its work. For, by transferring the sanction of the law to the side of economy and purity, it will conduce to the growth of a more healthy public opinion in those constituencies, which are at present the most corrupt.

The nature of the reform by which it is hoped that these results may be attained will be gathered from an Analysis of the Corrupt and Illegal Practices Prevention

* Cp. Burnett's *Hist. of Own Times*, ii. 247 (Ed. 1784).

Act of 1883, in which its various provisions are summarised under the following heads:—

- I. Provisions defining the offences which may be committed under the Act, and providing for the punishment of the same (ss. 1-21; 36-38).
 - II. Authorised excuse and exception for some of such offences (ss. 22, 23).
 - III. Enactments relating to election expenses (ss. 24-35).
 - IV. Provisions respecting the trial of election petitions, and other legal proceedings relating thereto, or arising out of the same (ss. 40-46; 49-62).
 - V. Amendment of law as to polling districts, &c. (ss. 47, 48).
 - VI. Definitions (ss. 63, 64); application of Act to Scotland and Ireland (ss. 68, 69); short titles, repeals, commencement and continuance of Act (ss. 65-67, 70).
 - VII. Schedules.
-

I.—*Provisions relating to Offences against the Act.*

The offences punishable under the Corrupt Practice Acts are divided into four classes:—

- A.—Corrupt Practices.
- B.—Illegal Practices.
- C.—Illegal payments, employment and hiring.
- D.—Miscellaneous Offences.

The following is a complete Table of these offences, setting forth the Punishments and Incapacities which are involved in each case:—

TABLE OF OFFENCES, PUNISHMENTS,

OFFENCE.	PUNISHMENT.
A.—CORRUPT PRACTICES (s. 3).	
1. Treating. Sec. 1. <i>Misdemeanour.</i>	<p>(i.) <i>On Conviction.</i> Imprisonment for one year or less, with or without hard labour; <i>or</i>, Fine not exceeding £200. Sec. 6 (1).</p> <p>(ii.) <i>If summarily tried by Election Court.</i> Imprisonment for six months or less, with or without hard labour; <i>or</i>, Fine not exceeding £200. Sec. 43 (4).</p> <p>[<i>Note.</i>—The same punishments, but not the same incapacities, follow upon conviction for similar offences at Municipal Elections. Sec. 38 (10), and M. C. Act, 1882, ss. 77, 78.]</p>
2. Undue Influence. Sec. 2. <i>Misdemeanour.</i>	The same as above.
3. Bribery, as defined by s. 2 of C. P. Act, 1854. <i>See</i> s. 3, 1883. <i>Misdemeanour.</i>	As above.
4. Personation, or aiding, abetting, &c., the same as defined by the Ballot Act, 1872, s. 24. Secs. 3, 6 (2). <i>Felony.</i>	<p>(i.) <i>On Conviction.</i> Imprisonment for two years or less, with hard labour. Sec. 6 (2).</p> <p>(ii.) <i>If summarily tried by Election Court.</i> Imprisonment for six months or less, with or without hard labour; <i>or</i>, Fine not exceeding £200. Sec. 43 (4).</p>

INCAPACITIES AND PENALTIES.

INCAPACITIES.	PENALTY IN ACTION.
<p>(1.) Of registration as an elector or voting in any election (Parliamentary or otherwise) in the United Kingdom, for <i>seven years</i> from conviction, s. 6 (3), or sentence of Election Court, s. 43 (4).</p> <p>(2.) Of holding any public or judicial office, for <i>seven years</i> from conviction, s. 6 (3), or sentence of Election Court, s. 43 (4).</p> <p>(3.) For election to, or seat in, House of Commons for <i>seven years</i> from conviction, s. 6 (3), or sentence of Election Court, s. 43 (4).</p> <p>(4.) If a candidate and reported by Election Court, incapacity of ever sitting again for same constituency, and avoidance of election if elected (s. 4).</p> <p>(5.) If a justice of the peace, barrister, &c., &c., liability of disgrace in profession, s. 38 (6-9).</p> <p>(6.) Nullity of vote at election in question, s. 36. This also results from offences at Municipal and other Elections (s. 37).</p>	<p>[<i>Note.</i>—Electors corruptly accepting treating or bribes are themselves guilty of treating and bribery. Sec. 1 (2), and Corrupt Practices Act, 1854, s. 3].</p> <p>[<i>Note.</i>—If an offender is merely reported, and not prosecuted and convicted, the term of incapacity commences from date of election, and not from date of report. See note to s. 38 (5). And if candidate reported guilty by his agents only, he is merely incapacitated to sit for same constituency for seven years from date of report, and if elected, his election is void. Sec. 5].</p>
As above.	<p>[<i>Note.</i>—Indictments for corrupt practices not triable at Quarter Sessions. C. P. Act, 1854, s. 10; and Act, 1883, s. 53 (1).]</p>
As above. But in case of a candidate, (4) applies, whether offence committed "by or with knowledge and consent of candidate."	
As above. But in case of a candidate, (4) applies, whether offence committed "by or with knowledge and consent of candidate."	<p>[<i>Note.</i>—If the personator takes the oath of identification (under 6 Vic. c. 18, s. 81) and forswears himself, he is guilty of perjury; and, if he wilfully makes a false answer to the questions as to his identity when put to him, it is a misdemeanour, and he shall be indicted and punished accordingly (<i>ibid.</i>)]</p>

TABLE OF OFFENCES, PUNISHMENTS,

OFFENCE.	PUNISHMENT.
<p>5. Knowingly making a false declaration as to election expenses. <i>Wilful and Corrupt Perjury.</i> Sec. 33 (7). [By candidate or election agent only.]</p>	<p>(i.) <i>On Conviction.</i> Imprisonment for seven years or less, with hard labour.</p> <p>(ii.) <i>If summarily tried as a corrupt practice, by Election Court.</i> Six months or less, with or without hard labour; or, Fine not exceeding £200.</p>
<p>6. Corrupt withdrawal of petition. Sec. 41 (4). <i>Misdemeanour.</i></p>	<p>On conviction, imprisonment for one year or less, And fine not exceeding £200.</p>

B.—ILLEGAL PRACTICES (ss. 7-21.)

1.—If committed by candidate or any agent.

<p>7. Paying for conveyance of voters to and from poll. Sec. 7 (1). [7-9. Persons receiving such payment, &c., are themselves guilty of illegal practices. Sec. 7 (2).]</p>	<p>Fine, on summary conviction, not exceeding £100.</p>
<p>8. Paying electors for advertising. Sec. 7 (1).</p>	<p>As above.</p>
<p>9. Paying for committee rooms in excess of legal number. Sec. 7 (1).</p>	<p>As above.</p>

INCAPACITIES AND PENALTIES—*continued.*

INCAPACITIES.	PENALTY IN ACTION.
As above.	
None.	[<i>Note.</i> —This is not a corrupt practice as defined by the Act, but is placed here on account of its being a more serious offence than those which follow.]

(1.) Of registration as an elector or voting at any election (Parliamentary or otherwise) in constituency where offence committed, for *five years* from conviction. Sec. 10.

(2.) Nullity of vote at election in question (Sec. 36), or at any election for which he is disqualified. Sec. 37.

(3.) If election court report "by or with knowledge and consent of candidate," incapacity also to sit for said constituency for *seven years* after report. Sec. 11.

(4.) If candidate reported guilty by *agents*, mere incapacity to sit for said constituency during the then Parliament and avoidance of election. Sec. 11.

[*Note.*—Voters may in some cases be conveyed by sea. Sec. 48.]

As above.	[<i>Note.</i> —Except where elector an advertising agent, and payment made in ordinary course of business. Secs. 5-7 (3)].
As above.	

TABLE OF OFFENCES, PUNISHMENTS,

OFFENCE.	PUNISHMENT.
10. Payment of expenses or of moneys provided for the election, except through election agent. Sec. 28 (1).	As above.
11. Voting when prohibited, or inducing another to do so Sec. 9 (1).	As above.
12. Publishing false statements of withdrawal of a candidate. Sec. 9 (2).	As above.
II. If committed by candidate or election agent.	
13. Expense above legal maximum. (Sec. 8).	As above.
14. Payment by election agent of claims which are barred by lapse of time. Sec. 29 (2).	As above.
15. Payment by election agent of any expenses after time limited for such payment. Sec. 29 (4).	As above.
16. Failing to make return of election expenses within time limited. Sec. 33 (1) (6).	As above.

C.—ILLEGAL PAYMENT, EMPLOYMENT AND
HIRING (ss. 13-21).

17. Providing money for illegal practice or payment. Sec. 13.	<p>(i.) <i>If committed by person not being candidate or election agent.</i> On summary conviction, fine not exceeding £100.</p> <p>(ii.) <i>If committed by candidate or election agent.</i> The offence ranks as an <i>illegal practice</i>, as to which, see above, 7-16.</p>
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INCAPACITIES AND PENALTIES—*continued.*

INCAPACITIES.	PENALTY IN ACTION.
As above.	
As above. As above.	[11 & 12. <i>Note.</i> —Candidate not liable nor election avoided if committed by his agent other than his election agent. Sec. 9 (3).]
As above. As above. As above. As above.	[<i>Note.</i> —Where such illegal payments (as in 14, 15) are proved to have been made without sanction or connivance of candidate, his election is not avoided, nor does he suffer any incapacity. Sec. 29 (6).]

Prohibition to vote, and nullity of vote if given. Sec. 36.

In case of a candidate or election agent, further incapacities as illegal practice.

TABLE OF OFFENCES, PUNISHMENTS,

OFFENCE.	PUNISHMENT.
18. Letting, lending, hiring or borrowing hackney carriages, &c., to convey voters to poll. Sec. 14.	As above.
19. Corrupt withdrawal from a candidature. Sec. 15.	As above.
20. Payments for bands, torches, flags, cockades, &c. (sec. 16). Persons knowingly receiving such payment also guilty. Sec. 16 (2).	As above.
21. Giving or providing cockades, &c., to persons in constituency before, during or after election. C. P. Act, 1854, s. 7.	—
22. Employing persons for election purposes in excess of legal number. Sec. 17 (1). Persons so employed, if knowing employment illegal. (<i>Ibid.</i>)	As above.
23. Printing, publishing and posting election bills, &c., without printer's name and address. Sec. 18.	As above.
24. Use of committee-room— (a) in premises or clubs licensed for sale of intoxicating liquors; (b) any place where refreshment of any kind is ordinarily sold; (c) public elementary school. Sec. 20.	As above.
25. A member sitting and voting, after expiration of time for sending in return and declaration as to expenses, without authorised excuse for failing to transmit same. Sec. 33 (5).	—

INCAPACITIES AND PENALTIES—*continued.*

INCAPACITIES.	PENALTY IN ACTION.
As above.	[But electors may <i>jointly</i> hire carriages, &c., for their own conveyance. Sec. 14 (3).]
As above.	
As above.	
—	£2 for each offence, and full costs of suit to such person as shall sue for same.
As above.	—
As above.	—
As above.	—
—	£100 for every day he so sits or votes to any person suing for same.

TABLE OF OFFENCES, PUNISHMENTS

OFFENCES.	PUNISHMENTS.
D.—OTHER OFFENCES UNDER THE CORRUPT PRACTICES ACTS.	
26. Refusal of election agent to obey order of Court as to return of election expenses. Sec. 34 (2).	Fine, not exceeding £500.
27. Elector, who has acted as paid canvasser, &c., within six months before or during any election, if he votes. <i>Misdemeanour.</i>	Fine or imprisonment, or both, as for a common law misdemeanour (Archbold "Cr. Pl.," p. 188).
28. Employment by candidate of corrupt agent or canvasser (P. E. Act, 1868, s. 44).	—
29. Breach of duty by returning officer (s. 61 (1) and Ballot Act, 1872, s. 11).	—
30. Returning officer, his clerk, &c., or deputy, if acting as agent for candidate (s. 61, R. P. Act, 1867, s. 50, and Ballot Act, 1872, s. 11).	Fine or imprisonment, or both, as for a common law misdemeanour (Archbold, <i>ubi sup.</i>).
31. Breach of duty by registration officer (s. 61 (2) and 6 Vic. c. 18, s. 97).	—

INCAPACITIES AND PENALTIES—*continued.*

INCAPACITIES.	PENALTY IN ACTION.
—	—
—	—
Avoidance of election.	—
—	Penalty, not exceeding £100 to aggrieved person, in addition to any other penalty, &c. (as to which, see note to s. 61).
—	—
—	Penalty not exceeding £100, with full costs of suit, to aggrieved party.

NOTE.—It is to be observed—(1.) That general corruption, from whatever person it proceeds, and whether in the form of treating, bribery or intimidation, *ipso facto* avoids an election by the common law. (2.) In the case of the following offences, *Bribery, Personation, False Declaration and Employment of Corrupt Agents*, the Court has no power to grant relief, as it has in the case of the more venial offences, as provided by ss. 22, 23 and 34.

II.—*Authorised Excuse and Exception for the above Offences* (ss. 22, 23).

Report
exonerating
candidate in
certain cases.

Where the Election Court report that a candidate has been guilty *by his agents* of treating, undue influence, or illegal practices, and further,

- (1.) That no corrupt or illegal practice was committed by the candidate or his election agent, and that the offences reported were committed contrary to their orders, and without their sanction or connivance; *and*
- (2.) That they took all reasonable means for preventing the same; *and*
- (3.) That the said offences were of a trivial, unimportant and limited character; *and*
- (4.) That in all other respects the election was pure on the part of the candidate and his agents,

Then the election shall not be void, nor the candidate subject to any incapacity (s. 22).

The High Court and Election Court have also power to except from being an illegal practice, &c., any act or omission of a candidate, or his election agent, or any other agent or person, where it is proved that, though in contravention of the Act, it arose from inadvertence, accidental miscalculation, or some other reasonable cause, and in any case not from any want of good faith; and that due notice has been given of the application to be made for such exceptions (s. 23).

III.—*Election Expenses* (ss. 24–35).

1. On or before the nomination day, an election agent (who may be the candidate himself) is to be named by or on behalf of each candidate, and his name and address declared in writing to the returning officer, who shall forthwith give public notice of the same, together with the address of his office, and of the office of his sub-agent (if any) within the constituency, to which all claims, notices and other documents may be sent, and if so sent, are to be deemed to have been served on him (ss. 24–26). Nomination of election agent.

2. Only one election agent may be appointed, and the appointment (even where the candidate names himself) may be revoked, and in the case of death a successor shall be forthwith appointed. Sec. 24 (4). Number and appointment of election agents.

3. In certain cases (*see* schedule 1.) the election agent may appoint the number of deputies (or sub-agents) therein mentioned, who shall be in all respects in the same position as the election agent himself. The name and address of every such sub-agent is to be declared to the returning officer, and by him forthwith published, one clear day before the polling. Such appointment may be revoked by the election agent, in which case, or in case of death, another may be appointed in the same way, but the appointment is not vacated by the election agent who appointed him ceasing to act (s. 25). Sub-agents.

4. All paid appointments (as of polling agents, &c.) and the hiring of committee rooms, are to be made by the election agent or his deputy; and no contract involving election expenses will be enforceable against the candidate, unless made by the candidate Duties of election agent.

himself, his election agent or sub-agent (s. 27). But the rights of creditors, ignorant that a contract or expense has been made or incurred in contravention of this Act, are saved (s. 19).

All election expenses to be paid through him.

The payment of all election expenses must be made by or through the election agent or his sub-agent, and all money provided by any person other than the candidate for electoral purposes, must be paid to the candidate or his election agent.

Exception.

Exception.—A tender of security to or any payment by the returning officer, or any sum disbursed by any person out of his own money for any small expense legally incurred by himself, if such sum is not repaid to him (s. 28).

Claims against the candidate, how dealt with.

5. All election expenses paid by the election agent or his sub-agent, if above 40s. in amount, are to be vouched for by a bill stating the particulars, and by a receipt. Every claim in respect of election expenses must be sent in to the election agent within 14 days after the declaration of the poll, else they are barred; and all claims are to be paid within 28 days of the same date; but if within that time the election agent disputes them, or refuses or fails to pay them, they are deemed to be disputed claims, and the claimant may sue for the same in any competent Court (s. 29); when the disputed amount may be referred for taxation to the Master or other proper officer of the Court (s. 30). And the High Court, moreover, has power, on cause shown, to allow a claim, although sent in after the time allowed; and any sum so allowed may be paid by the candidate or his election agent, as if within the time limited (s. 29).

So far as circumstances admit, the remuneration of the election agent is to be dealt with as if he were any other creditor; but the Returning Officer's charges are to be transmitted to the election agent within the time (21 days after the declaration of the poll) specified by the 38 & 39 Vic. c 84, s. 4, except that they need not be transmitted to the candidate as well (s. 32). Election agent's remuneration and returning officers' charges.

6. The candidate may himself pay personal expenses (defined in s. 64) up to £100, of which he is required to send in a written statement to his election agent within the time limited (14 days after return of the election). And any person (if so authorised, in writing, by the election agent) may pay petty expenses up to the amount named in the authority, of which particulars are also to be sent in, vouched and receipted by the said person, to the agent, within the time limited (s. 31). Candidates' personal expenses. Other petty expenses.

7. Within 35 days after the declaration of the poll, the election agent is to transmit to the returning officer a true return of all the candidates' election expenses in the form given in the second schedule, which return is to be accompanied by a declaration respecting the same (according to the form prescribed in the second schedule), made by the agent before a justice of the peace. And a similar declaration by the candidate is to be transmitted at the same time, or within seven days afterwards. But in the case of a candidate being absent from the United Kingdom at the time, this period is extended for himself only, to 14 days after his return. And where the High Court permits the payment of claims after the date Return and declarations respecting expenses by election agent. By candidate.

at which such return is transmitted, a return of the sums so paid, together with a copy of the order of Court must, within seven days, be transmitted to the returning officer (s. 33).

For sitting or voting in Parliament, after failure, to transmit the said return and declaration within the proper time, and without the authorised excuse, a candidate is liable to forfeit £100 a day to any person suing for the same. Sec. 33 (5).

Authorised
excuse for non-
compliance
with Act as to
above return
and declara-
tions.

8. In case of failure to transmit the said return and declarations as required, or in case of error or false statement in the same, the High Court has power upon application (of which due notice must be given in the constituency), supported by the necessary evidence, to make an order allowing an authorised excuse for such non-compliance with the Act. And where it arises from the fault of any person being or having been election agent or sub-agent, he shall be required to attend before the Court and explain his conduct, and submit to whatever order the Court may make, under penalty of a fine not exceeding £500 (s. 34).

Publication of
election
accounts.

9. It is the duty of the Returning Officer, within ten days after he receives the return from the election agent, to publish a summary thereof in not less than two of the local newspapers, together with notice of time and place at which the same may be inspected. He is also to keep them at his office, open to inspection on payment of a fee of 1s., for two years; at the end of which time they may be destroyed, unless the candidate or his election agent require them to be returned. Copies also may be had at a prescribed rate (s. 35).

IV.—*Provisions respecting the Trial of Election Petitions and other Legal Proceedings relating thereto or arising out of the same* (ss. 11, 12, 39–46, 49–62).

This branch of the subject may be most conveniently summarised under the following heads:—

- (1.) The Election Court and Trial of Election Petitions;
- (2.) Duties of the Public Prosecutor under this Act;
- (3.) Criminal proceedings under this Act;
- (4.) Report by the Court;
- (5.) Election Commissioners;
- (6.) Consequences of Report by Court or Commissioners;
- (7.) Appeal;
- (8.) Proceedings as to disqualification of Electors.

1.—*The Election Court and Trial of Election Petitions.* The Election Petition.

All questions as to the validity or invalidity of an election are, in the first instance, raised by a petition, presented under the P. E. Act, 1868 (Appendix, p. 350), to an Election Court consisting of two Judges (42 & 43 Vic. c. 75, s. 2) of the Queen's Bench Division, in England (Judicature Act, 1881, s. 13); to the Court of Session in Scotland, s. 68 (4); and to the Court of Common Pleas in Ireland.

The petition must be signed by the petitioners, who must be properly qualified persons and are required to give security for costs, and must be presented within a given time (*see* P. E. Act, 1868, ss. 5 & 6). The trial takes place in the borough or county to which it relates (*ib.* s. 11, sub-sec. 11), and Where tried.

the Judges are to have the same reception, powers and authority as the Judges of Assize (*ib.* ss. 28–30). The Public Prosecutor must also in person, or by deputy, attend every trial, and prosecute those who are guilty of corrupt and illegal practices (Act of 1883, s. 43).

The present Act (a) extends the provisions of the P. E. Act, 1868, as to the Report of the Election Court, so as to be applicable to illegal as well as corrupt practices (s. 11).

Time for
presenting.

(b.) Extends the time within which a petition, based upon an allegation of an illegal practice, also in the case of offences relating to the return and declarations respecting election expenses (even when the same amounts to a corrupt practice), may be presented under the Act of 1868 (s. 40).

Withdrawal

(c.) Requires, in case of withdrawal of a petition, affidavits from all the parties thereto, and their solicitors and the election agents, stating the grounds of such withdrawal, and that no agreement (other than a lawful one, which, if any, must be set forth) has been entered into. The corrupt withdrawal of a petition is made a misdemeanour (*see* Table of Offences). Copies of such affidavits are to be furnished to the Public Prosecutor, who may be heard in opposition to the proposed withdrawal. The Court has the same powers in respect of any agreement, &c., prohibited by this section, as in the case of a corrupt withdrawal under s. 35 of the P. E. Act, 1868; and in every case of withdrawal must report to the Speaker the circumstances attending the same. Further, if more than one solicitor is concerned for the petitioner or respondent, whether

as agent for another solicitor or otherwise, the affidavit is to be made by all such solicitors, and where a person, not being a solicitor, is lawfully acting as agent in the matter, he shall be able to make an affidavit as if a solicitor (s. 41).

(d.) Provides for the continuous sitting of the Election Court during the trial of the petition (s. 42). Sittings of Election Court.

2.—*Duties of the Public Prosecutor under this Act.*

The Public Prosecutor (or his assistant, who must be a barrister or solicitor of not less than 10 years' standing) is required to attend every trial of an election petition, and summon witnesses, and prosecute offenders, &c., either with or without directions to that effect from the Court (s. 43). It is also his duty, where information is given to him that corrupt or illegal practices have prevailed in reference to any election, to make such inquiries and institute such prosecutions as may seem necessary (s. 45). Public Prosecutor to attend Election Court. To follow up information as to Corrupt Practices.

3.—*Criminal Proceedings under the Act.*

Prosecutions for offences under the C. P. Acts may be instituted against offenders who have not received certificates of indemnity—as to which see p. 27. Prosecutions under the Act by whom to be instituted.

(1.) By the Public Prosecutor, either in obedience to directions by the Election Court or on his own initiative; and either before that Court or before any other competent Court (s. 43).

(2.) By the Attorney-General, upon the report and evidence of the Election Court or Commissioners (s. 60); and he may either himself institute such proceedings or direct the Public Prosecutor to do so,

42 & 43 Vic.
c. 22.

who is required to act, subject to the regulations of the Prosecution of Offences Act, 1879, in accordance with any such directions of the Attorney-General. (s. 57.)

(3.) By private individuals, who may also place the matter in the hands of the Public Prosecutor to be by him conducted (42 & 43 Vic. c. 22).

A person may be prosecuted for offences under this Act either before an election Court or any other competent Court, *i.e.*, in the case of Corrupt Practices, the Assizes, or High Court or Central Criminal Court (s. 50), but not Quarter Sessions (s. 53, and C. P. Act, 1854, s. 10).

(a.)—*Where a person is prosecuted before an Election Court:—*

Procedure in
prosecutions
before election
Court.

(1.) If he appears and elects to be tried by a jury (which he has a right to do if the offence is a corrupt practice, s. 43 s.-s. 4), or if he does not appear, or if the Court thinks it expedient that he should be tried by some other Court, the Court, if of opinion that the evidence is sufficient, shall order him to be prosecuted on indictment, under the Acts relating to indictments before justices (s. 55 s.-s. 2), or before a Court of summary jurisdiction, as the case may require, and shall commit him for trial or cause him to give bail; or if he be not present, shall issue a summons or a warrant, as the case may be (s. 43 s.-s. 5, 6.)

The prosecution may also be removed, at the instance of the Attorney-General, into the High Court or Central Criminal Court; or it may be tried by a special jury in the Royal Courts of Justice (s. 50).

(2.) If he appears, and does not elect to be tried by a jury, and the Court does not think it expedient that he should be tried before some other Court, the Court shall proceed to try him summarily (s. 43 s.-s. 4), and the Summary Jurisdiction Acts shall apply to such prosecution, except that there is no appeal from the Election Court (s. 55); and if convicted, the Court shall adjudge him (in the case of a *corrupt* practice) to imprisonment, with or without hard labour, for a term not exceeding six months, or to pay a fine not exceeding £200; and (in the case of an *illegal* practice) to pay a fine not exceeding £100, as fixed by s. 10; and to be subject, in either case, to the incapacities to which he would be subject under ss. 6 and 10 (s. 43 s.-s. 4).

Summary trial
by Election
Court.

(b.)—*Where the prosecution is not instituted before an Election Court:—*

(1.) The Public Prosecutor (and private individuals also, if they choose) may prosecute offences before “any other competent Court” (s. 43), viz., in the case of *corrupt* practices, the Court of Assize, or the High Court (Queen’s Bench Division, s. 56); and, in the case of *illegal* practices and *illegal* payments, &c., a Court of Summary Jurisdiction under the Summary Jurisdiction Acts, subject to appeal to Quarter Sessions (s. 54).

Before other
competent
Court.

(2.) An indictment (which includes an information, s. 64) which has been instituted in the High Court, or removed into the High Court by a writ of certiorari at the instance of the Attorney-General, may, upon his suggestion on the part of the Crown, be tried in the Central Criminal Court, or before a special jury at the Royal Courts of Justice (s. 50).

The following provisions also relate to criminal proceedings under this Act:—

Limitation of
time for pro-
secution.

(a.) All proceedings for corrupt or illegal practices must be commenced within one year after the offence was committed, the service or execution of the writ or other process being deemed the commencement thereof, except in case of evasion, when the issue shall be so deemed (s. 51 s.-s. 2); or, if it was committed in reference to an election, which is the subject of an inquiry by Commissioners, the proceeding shall be commenced either within the year as above, or within three months after the report of the Commissioners, whichever period last expires, so that it be commenced within two years after the offence was committed. And the same limitation shall apply to all proceedings for any such offence under the Summary Jurisdiction Acts (s. 51).

Persons
charged with
heavier, may be
found guilty
of lighter,
offence.

(b.) Persons charged with corrupt practices may be found guilty of the lesser offence of illegal practice, if the circumstances warrant it; and in the same way, a person charged with an illegal practice may be found guilty thereof, though the act amounts to a corrupt practice; and similarly as to illegal hiring, &c. (s. 52).

General
allegations in
indictments.

(c.) Sec. 6 of the 26 & 27 Vic. c. 29, making general allegations sufficient in indictments for bribery, &c., is extended to any prosecution for any corrupt practice under this Act and to any action for pecuniary forfeiture (s. 53 s.-s. 1); and a similar provision is enacted in reference to illegal practices, &c. (s. 53 s.-s. 3).

Evidence by
husband or
wife.

(d.) In any such prosecution or action, the person prosecuted or sued, and the husband or wife of such

person, may, if he or she think fit, be examined as an ordinary witness (s. 53, s.-s. 2). And a witness is not to be excused from answering on the ground that his answer may incriminate him, or on the ground of privilege; except a solicitor or agent for a party to a petition, who has not taken any part or been concerned in such election (s. 59, s.s. 1-5). And witnesses are also relieved from any examination as to corrupt practices at or in relation to any election prior to the passing of this Act (s. 49.) But

Witnesses not excused from answering.

- (i.) If he answer truly all the questions required by the Election Court, or Commissioners (s. 59 s.-s. 4), he will receive a certificate of indemnity (s. 59 s.-s. 1), which shall serve to stay any pending proceedings against him for any offence under the Acts (s.-s. 2); and
- (ii.) His answers shall not, except in case of his perjury, be admissible in evidence against him.

Certificate of indemnity.

Effect of perjury.

Such certificate, however, will not relieve him from any incapacity, or proceeding to enforce the same, under the Act (other than a criminal prosecution) (s. 59 s.-s. 3). But provision is made (by s. 46) for the removal of incapacity on proof that it was procured, either before or after the commencement of this Act, by perjury.

4.—*Report by the Court.*

On the conclusion of the trial, it is the duty of the judges to make a report to the Speaker of the result, as provided by s. 11, s.-s. 14 of

Report by judge.

the P. E. Act, 1868 (Appendix, p. 356), extended by s. 11 of the new Act to illegal as well as corrupt practices. They shall also report whether the persons reported as guilty of corrupt or illegal practices have, or not, received certificates of indemnity; which report shall be laid before the Attorney-General, with a view to his instituting the necessary prosecutions (s. 60). And the House of Commons has, on being informed thereof by the Speaker, to give the necessary directions for confirming or altering the returns, or for issuing a new writ, or for carrying the determination into execution. (31 & 32 Vic. c. 125, s. 13.)

5.—*Election Commissioners.*

Appointment of Commissioners.

If the judges report that corrupt or illegal practices have extensively prevailed at the election in question, or if two or more electors petition the House, alleging the same charge (31 and 32 Vic. c. 125, s. 56.), then upon a joint address of both Houses of Parliament, Election Commissioners may be appointed to inquire into the same (s. 12.) But they may not make any inquiries concerning any election prior to this Act (s. 49). And their report as to the persons guilty of corrupt or illegal practices, when laid before the Attorney-General must be accompanied by the evidence on which it is based (s. 60).

Their functions and powers.

In other respects their functions and powers are very similar to those of an Election Court; but, as being the inferior tribunal, no report of the Commissioners can avoid an election declared by the Election Court to be valid (s. 38, s.-s. 5).

6.—*Consequences of Report by Election Court
or Commissioners.*

As to the general punishments and incapacities imposed by this act on persons guilty of offences under it, *see* Table at p. 6.

(a.) Before a person, not being a party to an election petition, nor a candidate on behalf of whom the seat is claimed, is reported by an Election Court, and before any person is reported by Election Commissioners, he shall be given an opportunity of being heard by himself and of calling evidence in self-defence (s. 38, s.-s. 1). Parties to be heard in self-defence before being reported.

(b.) Every person who, after the commencement of this Act, is reported by any Election Court or Commissioners to have been guilty of any corrupt or illegal practice at an election, shall, whether he received a certificate of indemnity or not, be subject to the same incapacity as he would be subject to, if he had, *at the date of such election*, been convicted of the same offence (s. 38, s.-s. 1). Incapacities consequent on report.

(c.) The conduct of a justice of the peace, who is reported to have been guilty, shall, whether he has obtained a certificate or not, be reported, with the evidence, by the Public Prosecutor to the Lord Chancellor, and in such a case, where the offender acted as a justice by virtue of his being or having been a mayor, the Lord Chancellor shall have the same power to remove him as if he was named in the Commission of the Peace (s. 38, s.-s. 6). Reports as to justices of the peace.

(d.) Where the offender is a barrister or solicitor, or belongs to any profession the admission to which is regulated by law, his conduct shall similarly be Barristers, solicitors and others.

reported to his Inn of Court, the High Court, or other tribunal having power to take cognisance of any misconduct of such persons, to be dealt with accordingly (s. 38, s.-s. 7).

Licensed
persons.

(e.) In the case of persons holding licences under the Licensing Acts—(i.) if the offence was committed on his premises, his conviction shall be entered in the proper register of licences; and (ii.) if he has knowingly permitted such offences on his premises and is reported accordingly, such report shall be brought by the Public Prosecutor before the licensing justices, who shall cause the same to be entered in the proper register of licences, and shall be ground for refusing a renewal of such licence (s. 38 s.-s. 8, 9).

Report as to
the above.

(f.) In each of the above cases, where the evidence was given before Election Commissioners, they shall report to the Public Prosecutor, with such information as may be necessary to enable him to act under this section, which is also to apply to an Election Court under Part IV. of the Municipal Corporation Act, 1882, as well as under this Act (s. 38 s.-s. 9, 10).

Costs.

(g.) The costs for the attendance of the Public Prosecutor, or his deputy, at election petition trials, may be ordered by the Court to be paid by the parties to the petition (s. 43 s.-s. 8). It is also in the power of the Court, if it thinks fit, in certain cases to order payment of the costs of an election petition by the constituency, or by any particular individuals, who have, however, the right of being heard in self-defence by counsel or solicitor. In other respects the rules and regulations of the Supreme Court of Judicature as to costs shall apply (s. 44).

With respect to costs and expenses of prosecutions under the Act, the provisions contained in ss. 10, 12 and 13 of the Act of 1854, Appendix, p. 341, are re-enacted (s. 53, s.-s. 1). And, subject to the above provisions, the costs of any prosecution or indictment for any offence under this Act, whether by the Public Prosecutor or his representative, or by any other person, shall, so far as they are not paid by the defendant, be paid as if they were costs of a prosecution for felony (s. 57, s.-s. 2). See further provisions as to recovery of costs payable by constituencies or individuals, s. 58.

7.—*Appeal.*

Every person reported by Election Commissioners Appeals from Commissioners. has a right of appeal (notice of which must be given to the Public Prosecutor) to the next assizes, held in the locality; and if such appeals are likely to interfere with the regular assize business, the Lord Chancellor may direct them to be heard by the Election Judges on the rota, one of whom shall proceed to the place and hear the appeals; and in such case, the provisions of the P. E. Act, 1868, shall apply as if he were the Election Court (s. 38 s.-s. 2-4). No appeal lies from a summary conviction From Summary Jurisdiction Courts. by the Election Court (s. 55, s.-s. 1). And the appeal from a Summary Jurisdiction Court is to Quarter Sessions (s. 54.)

8.—*Proceedings as to disqualification of Electors.*

As the disqualification of persons reported guilty of offences is an important part of the punishment Duties of registration officers as to disqualification of electors. imposed, the following provisions are enacted with a

view to carrying out the sentence of the Court or Commissioners in this respect.

The Registration Officer in every county and borough is required annually to examine the reports of any Election Court or Commissioners relating to his constituency, and make out and send to the overseers for publication, a list of persons incapacitated for voting by corrupt or illegal practices. But every person included in such Corrupt and Illegal Practices Lists has a right to be heard at the Revision Courts, and the Revising Barristers shall determine all claims and objections relating thereto; but for this purpose, shall determine only whether a person is incapacitated by conviction or by any report, and not whether such person has, or not, been guilty (s. 39.)

V.—Amendment of Law as to Polling Districts and Polling Places (s. 47).

Increase in
number of
polling centres.

Under this section it is provided that every county shall be divided into polling districts, and a polling place assigned to each district, so as to enable every resident elector to have his polling place within three miles of his residence, provided every polling district contains 100 electors, certain agricultural boroughs being, for this purpose, treated as counties.

In boroughs, every resident elector is to have a polling place within a mile of his residence, provided each district contains 300 electors.

Powers are given to the local authorities to divide

counties and boroughs for the purpose of carrying out this section (s. 47).

VI.—*Definitions, Applications of Act, &c.*

The remaining sections of the Act do not call for Other sections of Act. any detailed notice in this connection.

Sec. 61 deals with breach of duty by returning and other officers.

Sec. 62 provides for due publication and service of notices.

Sec. 63 provides a new definition of candidate, and saves the rights of persons nominated without their consent.

Sec. 64 is the interpretation clause.

Sec. 65 contains short titles of various Acts.

Sec. 66 contains repeal of, and savings of rights, &c., under previous Acts.

Sec. 67 fixes the commencement of the new Act on the 15th of October, 1883.

Secs. 68 and 69 contain special provisions for the application of the Act to Scotland and Ireland; and

Sec. 70 limits its continuance to the 31st of December, 1884.

VII.—*Schedules.*

Finally, the Act is followed by five Schedules, the Schedules. contents of which may be summarised as follows:—

Schedule I. Enumeration of number of persons in each capacity who may be employed and paid in an election; none of whom,

if electors, may vote; legal expenses for committee rooms and other purposes; legal maximum scale of expenses in the case of separate and joint candidatures.

Schedule II. Forms of declarations and return of election expenses.

Schedule III. Enumeration of the Corrupt Practices Prevention Acts.

Schedule IV. Short titles of two earlier Acts.

Schedule V. Enactments repealed.

CORRUPT AND ILLEGAL PRACTICES ACT, 1883.

(46 & 47 VIC. c. 51.)

*An Act for the better prevention of Corrupt and Illegal Practices
at Parliamentary Elections.*

[25th August, 1883.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Corrupt Practices.

1. Whereas under s. 4 of the Corrupt Practices Prevention Act, 1854, persons other than candidates at Parliamentary elections are not liable to any punishment for treating, and it is expedient to make such persons liable; be it therefore enacted, in substitution for the said section 4, as follows :—

Sec. 1.

What is
treating.

- (1.) Any person who corruptly (a) by himself or by any other person, (b) either before, during, or after an election, (c) directly or indirectly (d) gives or provides, (e) or pays wholly or in part the expense of giving or providing any meat, drink, entertainment, or provisions to or for any person, for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at the election, or on account of such person or any other person having voted or refrained from voting, or being about to vote or refrain from voting at such election, shall be guilty of treating.
- (2.) And every elector who corruptly accepts or takes any such meat, drink, entertainment or provisions shall also be guilty of treating.

Sec. 1. This Act, except where otherwise specified (*see ss. 37-39 and notes*), applies only to Parliamentary and not to Municipal Elections (*see s. 64*).

Treating, how
dealt with
under the
old law,

Treating has usually been regarded as a far more venial offence than bribery. But, "in point of fact, corrupt treating and bribery run into one another" (*pr. Dowse, B., Carrickfergus, 3 O. & H. 91*), and there can be no valid reason for maintaining any distinction between them. The present Act accordingly places treating on the same footing as bribery, making both offences equally punishable as a misdemeanour. Sec. 6 (1).

Under the Corrupt Practices Prevention Act of 1854, s. 4, the candidate alone was punishable (in a fine of £50 and costs to any person who should sue for the same) for treating, whether by himself or by another; the voter being disqualified, or his vote, if given, rendered void.

and under the
new Act.

The present Act (1) extends the liability for the offence, so as to include "any person"; (2) makes "every elector" who corruptly accepts treating equally guilty with the person treating him; and (3) makes the offence a misdemeanour, punishable with one year's imprisonment with or without hard labour, and a fine not exceeding £200, and involving as well the incapacities fixed by s. 6 (3).

There must be
evidence of
intention

(a) "*Corruptly*."—This word, as in the repealed section of the Act of 1854 (*Staleybridge, 1 O. & H. 73; North Norfolk, ib. 242; Brecon, 2 ib. 44; Carrickfergus, 3 ib. 91*), governs the whole of the section. Its meaning was thus explained by Blackburn, J. (following Willes, J., in *Cooper v. Slade, 6 H. L. C. 773*), in the *Bewdley* case (*1 O. & H. 19*):—"As to this word 'corruptly,' it does not mean

wickedly, or immorally, or dishonestly, or anything of that sort; but *with the object and intention of doing that which the Legislature plainly means to forbid*. In fact, giving meat or drink is treating when the person who gives it has an intention of treating, not otherwise" (*cp. Wallingford*, 1 O. & H. 59; *Harwich*, 3 O. & H. 70).

Sec. 1.
—

And in all cases, it is a question of fact for the Judges whether the intention is made out by the evidence, which in every individual case must stand upon its own grounds (*Bewdley, ubi sup.*; *Youghal, ibid.* 298).

The intention,
a question
of fact for
the Judges.

(b) "*By himself or by any other person.*" — The repealed section of the Act of 1854 contained the words, "shall be accessory to giving," which included the case of a candidate knowing that treating was going on and yet taking no steps to prevent it (*Bewdley*, 1 O. & H. 17). This was a necessary provision, inasmuch as the candidate alone was liable to punishment. Since, however, the new Act extends the penalty to "any person" who may be guilty of treating, the candidate himself would no longer be liable in such a case, unless he actually paid, himself or through another person, wholly or in part for the entertainment.* But the presence of a candidate in a public-house, where drinking is going on, may raise a presumption of treating by him, if it be shown that an extraordinary amount of drink was consumed which could

A candidate,
how far
liable.

* Formerly it was "essential that the candidate should be mixed up in it; he himself must do the act forbidden, but he need not do it with his own money or by himself personally, if he should be in any way accessory to the giving or providing. If the agent for whom he is responsible, does it, that, so far as voiding the election goes, has the same effect as the candidate doing it" (*N. Norfolk*, 1 O. & H. 242).

Sec. 1. — not have been paid for by the persons there (*Lichfield*, 1 O. & H. 24).

The term "person" is defined by s. 64 to include an association, &c., the individual members of which, who have taken part in the commission of illegal acts, are punishable. But the mere fact of belonging or subscribing to such an association will not, it would seem, necessarily involve a member who is himself innocent, and was ignorant of any such transactions at the time of his joining.

Treating,
before
an election.

(c) "*Either before, during or after an election.*"—The repealed section of the C. P. Act, 1854, contained the words, "at any time before, &c." The limit of time will necessarily vary, according to the circumstances of each case. The treating may commence as soon as the candidate is before the constituency, although there is no election immediately impending. And so, in the *Youghal* case (1 O. & H. 291), the seat was avoided for acts of treating done by an intending candidate in July, although the dissolution did not take place till August (*cp. Poole*, 2 *ib.* 124). What has to be proved is, that the treating was intentionally done with a view to influencing votes at the election. How far it will be possible, under this provision, to prevent the indiscriminate nursing of boroughs by wealthy candidates it is impossible to say, for it is still true that "there is no law yet which says that any lavish expenditure in a neighbourhood with a view to gaining influence in the neighbourhood, and influencing an election, is illegal at all, unless made with a view to influencing a particular vote."

(*Hastings*, 1 O. & H. 218.) Perhaps the only remedy against such practices lies in the extermination of small constituencies, and in a greater regard being paid by the electors themselves to questions of national importance, rather than to the trivialities of local politics, which so often turn the scale.

Sec. 1.
—

The providing of refreshments by a candidate or his agent on the day of the nomination or of the poll, to persons actually engaged in the work of the election, though it may be colourable, and is certainly imprudent (*Wallingford*, 1 O. & H. 58), need not necessarily be treating, if given *bond fide* and unconditionally. "I cannot think that giving food to persons doing work on the day of the election is a corrupt act, assuming it was *bond fide*, and that nothing more than ordinary meals were supplied." (Martin, B., *Westminster*, 1 O. & H. 91; and *Bradford*, *ib.* 39.) And, in the case of the paid agents, clerks, &c., who are by the Act prohibited from voting (s. 17, and sched. 1, pt. i.), such providing of refreshment would be harmless enough, unless it were given with a view to influencing the votes of others not so debarred. The treating of non-electors, in order that they might influence voters (*Longford*, 2 O. & H. 15), or of women, that they might influence their fathers, brothers or sweet-hearts, would unquestionably avoid an election. (*Tamworth*, 1 O. & H. 86.) But the scope for providing, even *bond fide*, such entertainment, will now of course be materially limited by the stringent provisions of the new Act respecting the amount of the candidate's official and personal expenses.

The same remark applies to the providing of

Providing

Sec. 1.

—
refreshments
for committee-
men.

refreshments for the candidate's committee-men. This has in former cases been held not to avoid an election on the ground of its not being done "in order to be elected," it being well known how those men would vote (*Bradford*, 1 O. & H. 39); and this, even when the refreshment was supplied at a large number of public-houses (*Westminster*, *ib.* 91). Although where it appeared that the persons thus treated were only colourably put down as committee-men, the election was avoided (*Bradford*, *ubi sup.*). Now, all expenses beyond the legal maximum will avoid the election, and the amount available for such a purpose will therefore be proportionately reduced.

Treating after
the election;

As to treating *after* an election, Lush, J. decided in the *Brecon* case (2 O. & H. 43) that "the treating which the Act (of 1854) calls corrupt as regards a bygone election, must be connected with something which preceded the election, must be the complement of something done or existing *before* and calculated to influence the voter while the vote was in his power. An invitation given *before* to an entertainment to take place *afterwards*, or a practice of giving entertainments after an election, which it may be supposed the electors would calculate on, would, if followed up by the treat afterwards, give to it the character of corrupt treating;" and the election was in this case upheld on the ground that the entertainment had not only not been mentioned, but not even thought of, till after the election was over. (*Cp. Harwich*, 3 O. & H. 70.)

following upon
promises made
before;

But where the sitting Member had, in the course of his election speeches, used such expressions as

"when we have won the election, we will have an entertainment together," "when free and untrammelled by the election law, we will have a day's enjoyment together," and had followed up these promises by sending down large sums after the election to be expended on the entertainment, this, although the treat was afterwards given up, was held to avoid the election (*Kidderminster*, 2 O. & H. 176; *cp. Hereford*, 1 O. & H. 195; *North Norfolk*, *ib.* 242).

Sec. 1.
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And so, where it was proved that at the previous election large quantities of beer had been drunk and paid for by the sitting member after that election, and that similar treating had taken place at the subsequent election, the latter was avoided, on the ground that "it was expected and understood, though not expressed in absolute words, that a large sum of money would be paid for beer" (*Poole*, 2 O. & H. 124; *Carrickfergus*, 3 *ib.* 92).

or a practice leading to expectation of treating.

Similarly, a Committee had reported in the *Newcastle-under-Lyme* case, that a most objectionable practice prevailed of distributing money under the appellation of "market or dinner money" to the poorer voters after the election (B. & A. 453).

It is moreover well established that a promise of refreshments, *in futuro*, as opposed to the mere giving of food to be consumed on the spot, amounts to bribery (*Bodmin*, 1 O. & H. 124).

On the other hand, where refreshments had been ordered for a very considerable number of people before an election, but in consequence of advice that it would imperil the result, the person who gave the order countermanded it, and only the expenses which

Where order for refreshments countermanded.

Sec. 1. — the hotel keeper was put to in making the necessary provision, were paid, the election was upheld (*Salford*, 1 O. & H. 141). And where the sitting member spontaneously, and without premeditation, treated with whiskey a number of people who came out, as he was leaving the borough, to congratulate him on his success, and it was shown that he did not know whether they were voters or not, and, in fact, only two of them were, the election was not avoided (*Carrickfergus*, 1 O. & H. 265).

Indirect
treating ;

At test ballot ;

(d) "*Directly or indirectly.*"—These words refer, not to the acting indirectly through agents, which is included in the preceding words "by any other person," but to proceedings having for their immediate object, *e.g.*, the selection of candidates, which may take place some time before the election itself, and may therefore only affect it in a more or less indirect manner. Thus, in the *Bristol Case* (reported as *Britt v. Robinson*, 5 L. R. C. P. 503), three Liberal candidates having come forward, a test ballot was held for the purpose of deciding their claims, the three candidates binding themselves to abide by the decision. On the occasion of the test ballot, agents of the sitting member gave sums of money and drink to the voters to vote for him at the said ballot, and on this account the election was held void.

Municipal
Elections ;

Treating at a Municipal Election, where the Municipal Electors are the same individuals as the Parliamentary Electors, if done with the intention of influencing the latter, will avoid an election (*Hastings*, 1 O. & H. 220).

Registration
Courts ;

But refreshments to persons attending the Regis-

tration Courts are not necessarily corrupt treating, unless done to procure popularity or to influence a vote at the election (*ib.* 220). And so, a registration supper, provided by the sitting member's agent, for the purpose of celebrating the success of his party at the registration, does not fall within the Act (*Coventry*, 1 O. & H. 106).

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—

And again, the providing of wine, cigars, &c., at a dinner held by a non-political society (as the Odd Fellows Benevolent Society, *cp. Pontefract*, W. & D. 71), though regarded with suspicion, was held by Willes, J. (following the decision of former Election Committees), not to amount to corrupt treating; but "it appears to have been taken for granted that a similar treating of a society having a political character, if established in evidence, would have amounted to that offence" (*Windsor*, 1 O. & H. 4).

(e) "*Gives or provides, &c.*"—The statute does not say that the offence shall depend upon the amount of drink. The smallest quantity, given *with the intention*, will avoid an election (*pr. Blackburn, J., Wallingford*, 1 O. & H. 9). But on what scale and to what extent it has been done is of course a matter of common sense, and the lower and more illiterate the class of voters the smaller would be the amount necessary to secure their vote (*Stroud*, 2 O. & H. 113; *Bewdley*, 1 O. & H. 19). Power is now given to the Election Court, by s. 22, to relieve a candidate in cases where, though treating, undue influence, and illegal practices have taken place, these offences were of a very trivial nature, and the candidate and his election agents not only had nothing to do with them, but took all reasonable means for preventing them.

clubs and other societies;

amount, how far material.

Sec. 1.

Openness of
Act no excuse.

Nor will the openness of the proceeding be held to exculpate the guilty parties. "I think it is very likely that the people who got up these most unwise treats and entertainments did not know that what they were doing was contrary to the law" (Bramwell, B., *Stroud*, *ubi sup.*).

General
treating.

At the Common Law, general treating, *i.e.*, coming from unknown quarters in all directions on purpose to influence voters, would, no less than general bribery, avoid an election (*2nd Bradford*, 1 O. & H. 41). But unless it is thus general and indiscriminate, it is necessary to show that it was authorised by the candidate or his agent, or by some other person, otherwise it has merely the effect of extinguishing the elector's vote on a scrutiny (*ib.*, *Galway*, 2 O. & H. 56).

For the penalties inflicted, *see* below, ss. 4-6. Moreover, by s. 36, no person guilty of a corrupt or illegal practice, &c., may vote at the election, and if he does his vote is void.

What is
undue
influence.

2. Every person (*a*) who shall directly or indirectly, (*b*) by himself or by any other person on his behalf, make use of or threaten (*c*) to make use of any force, violence, or restraint, (*d*) or inflict or threaten to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss (*e*) upon or against any person in order to induce or compel (*f*) such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall by abduction, duress, (*g*) or any fraudulent device or contrivance, (*h*) impede or prevent the free exercise of the franchise of any elector, or shall thereby compel, induce, or prevail upon any elector either to give or to refrain from giving his vote at any election, shall be guilty of undue influence.

Undue
influence.

The exercise of undue influence in elections has been always held contrary to the common law (*Brad-*

ford, 1 O. & H. 40), although apparently not an indictable offence before 1854, and at different times the right of free election has been emphatically insisted upon by the Legislature. Thus the 3 Edw. I. c. 5, enacts that "Because elections ought to be free, the King commandeth, under pain of great forfeiture, that no man by force of arms, nor by malice or menacing, shall disturb any to make free election."

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—

Freedom of election is, that every person who has the franchise ought to be at liberty to go, and have the means of going, to the poll and giving his vote without obstruction, and without fear or intimidation (*pr. Martin, B., Salford*, 1 O. & H. 141), and should exercise his own judgment, and arrive at a conclusion which of the candidates he honestly believes is the best person to represent the borough, and give his vote for him (*Bradford*, 1 O. & H. 40).

The new definition is almost identical with the old one in s. 5 of the Corrupt Practices Act, 1854, and what modifications have been introduced are designed rather to render the definition of this offence less vague, than to alter the law on the subject.

(a) "*Every person.*"—The offence is not limited to the candidate or his agents, but where it is traceable to the candidate or his agents it avoids the election. In other cases, the vote obtained by intimidation is bad, and must be struck off (*Oldham*, 1 O. & H. 161).

(b) "*Directly or indirectly.*"—See note as to effect of these words, *suprà*, p. 42.

(c) "*By himself or by any other person on his behalf, make use of or threaten, &c.*"—The mere threat

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is equivalent to the actual carrying it into execution, and so where two persons threatened a Baptist minister, that they would give up their sittings in his chapel, it was held to be intimidation (*Northallerton*, 1 O. & H. 168). "A mere attempt on the part of an agent to intimidate a voter, even though it were unsuccessful, would avoid an election" (*ib.* 173).^{*} Nor is the intimidation any the less real, although it be an imposture, or even impossible of execution (*Oldham*, 1 O. & H. 162); and persons conveying threats, as well as those who make them, are guilty of intimidation. "In any case, where a vote is got by intimidation, it is a bad vote" (*Oldham, ubi sup.*). It was laid down in *North Norfolk* (1 O. & H. 242), that the threat must be "serious and deliberate, meant to affect the vote (though, perhaps, repented of and not afterwards acted upon)," and not "merely angry words not meaning anything." But if the anger be violent, the accompanying threat is hardly the less likely to produce its effect; and the same may be said whether the intention exist or not, provided the threat be apparently serious.

(d) "*Any force, violence, or restraint.*"—"Intimidation," to be within the statute, must be intimidation practised upon an individual, *i.e.*, "there must be an identification of some one or more specific individuals affected by the intimidation, otherwise it comes under the head of general intimidation." (*N. Durham*, 2 O. & H. 156; *cp. Cheltenham*, 1 *ib.* 64; *Nottingham, ib.* 246.)

By agents.

Where such a thing is done and is brought home

^{*} See, however, *Longford*, 2 O. & H. 17.

to the agent, it avoids the election. (*N. Norfolk*, 1 O. & H. 240.) So the *Stafford* election was avoided, on proof that the respondent's agent had incited the mob to beat and molest people on the polling day (1 O. & H. 229-233). "It is equally clear that whenever intimidation is brought home to the agent, it would upset the election, however slight the intimidation might be (S. C. 21 L. T. 212); and in the *Westbury* case (1 O. & H. 53), a *single* act of the kind by the candidate or his agent was held sufficient to avoid the election.

Where, of course, the intimidation amounts to an assault, battery, or false imprisonment, there exists the usual remedy either by action at law or by summary proceedings before a magistrate. Abduction or duress, if forcible, would be included in the terms force or restraint (*Lisburn*, W. & B. 227).

The lawful arrest, however, and imprisonment of a voter under legal process, or the ejectment of a tenant by his landlord, would not be an infringement of the section, unless it was shown to have been effected for the purpose of preventing him from voting as he pleased (*N. Norfolk*, 1 O. & H. 237).

At the common law, general intimidation, no less ^{General intimidation.} than general bribery and treating, is held, *ipso facto*, to avoid the election. And in this case it is unnecessary to trace it to the candidate or his agents, nor yet to prove that the majority has been thereby influenced (*Drogheda*, 1 O. & H. 257; *Staleybridge* 1 O. & H. 72; *Stafford*, *ib.* 229).

But, "it must be shown to spread over such an extent of ground, and to permeate through the community to such an extent, that the freedom of election

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—

has ceased to exist in consequence" (*Drogheda*, 1 O. & H. 259; *Bradford*, *ib.*, 40). "To set aside an election on the ground of general riot and violence, it must be established that persons possessing the ordinary nerve and courage of men have been prevented from going to the poll to record their votes" (*Salford*, *ib.*, 141; *Nottingham*, *ib.* 246; *cp. Longford*, 2 O & H. 12, 13).

Of course, one would not set aside an election for any trifling disturbance which may take place without any real hindrance or impediment to the voting (*Dudley*, 2 O. & H. 120), and where the rioting was wholly or substantially on the side of the defeated candidate, and the result of the poll appears to the Court to be a fair expression of the opinion of the constituency, *semble*, the election will not be set aside (*S. C. ib.*, and for adjournment in case of riot, *see* App. p. 327).

Number
intimidated
when
material.

In such a case the number of those intimidated is immaterial. It is sufficient to show that *some* have been deterred by such violence from going to the poll. "The humblest individual in the whole constituency has as good a right, without fear or intimidation, to come into the court-house on the day of the election . . . as the great majority of the constituency." (*Drogheda*, 21 L. T. 402).

Drunkenness of women is strong evidence of a general state of riot. (*Salford*, 1 O. & H. 136.)

Bramwell, B., in *N. Durham* (2 O. & H. 157), stated the law as follows:—"Where the intimidation is of such a general character that the result may have been affected, in my judgment, it is no part of the duty of a judge to enter into a kind of scrutiny

to see whether possibly, or probably even, or as a matter of conclusion upon the evidence, if that intimidation had not existed, the result would have been different. What the Judge has to do in that case is to say that the burden of proof is cast upon the constituency whose conduct is incriminated; and unless it can be shown that the gross amount of intimidation could not possibly have affected the result of the election, it ought to be declared void. Where there has been so large an amount of intimidation that it is uncertain whether the result would have been the same without it, it cannot be said that the election was free, &c.”*

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Where an act of intimidation has been committed, or a threat made, before an election, it is necessary to show that the effect of the act or of the threat is continuing at the time of the election. Thus, where the respondent had turned out his tenants for their votes after the election in 1868, and it was argued that this intimidated them at the election of 1874, Bramwell, B., said: “To my mind a threat must be operative at the time of the election, and a bribe, too, must be operative at the time of the election.” (*Windsor*, 2 O. & H. 91).† But it is doubtful whether general rioting before the polling day would in any case be held sufficient to avoid the election. (*See New Ross*, 2 P. R. & D. 198; *Drogheda*, W. & D. 206.)

Where committed before election.

It appears that a corrupt act done after the election will be held material only as “throwing light upon

After the election.

* *Cp. Stafford* (1 O. & H. 220). In this case, it is true, Blackburn, J., used some expressions which appear to conflict with the decisions above quoted; but the weight of authority is in favour of the view given in the text.

† Referring to this case, the same learned Judge said, in the *N. Durham* case, (2 O. & H. 189): “I am sorry to say I could not unseat him,” &c.

Sec. 2. — some transaction before the election, and so leading to the supposition that there was before the election some breach of s. 5 of the Corrupt Practices Act, 1854" (*Southampton*, 1 O. & H. 223).

Hiring roughs. In the *Cheltenham* case (19 L. T. 816), and again in the *Salford* case (1 O. & H. 140), it was held by Martin, B., that the introduction of hired roughs or pugilists, although exceedingly reprehensible, was not sufficient to avoid the election, unless, of course, general intimidation result therefrom, or unless it be proved that a single voter had been molested, or had "the slightest impediment or obstacle thrown in the way of his giving his vote," by roughs proved to have been hired by the candidate or his agent.

Vigilance committees.

And so "it is not illegal for private individuals to employ persons to keep the peace. It is a most dangerous practice, and one which ought rarely, if ever, to be resorted to. But anyone who presumes to appoint for himself a number of persons whom he calls private police is answerable, as their master, for the misconduct of any of them" (Willes, J., *Tamworth*, 1 O. & H. 78). The proper course is to swear in special constables, and not to employ watchers (*pr.* Pollock, B., in the *Salisbury* case, 3 O. & H. 134; *cp.* *Longford*, 2 O. & H. 13; and *Nottingham*, 1 O. & H. 246.)

In the *Stafford* case (21 L. T. 213), it was proved that "vigilance committees" were established, having under their orders non-voters for the purpose of going about the town and discovering corrupt practices on the other side. As to this, Blackburn, J., said, "I do not say that the mere employing of

a vigilance committee of that sort would be conclusive evidence that intimidation was intended, but it would very likely be the means of producing it."

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In most cases the employment of watchers, &c., was objected to rather as being bribery under s. 2, than intimidation under s. 5 (*Bewdley*, 1 O. & H. 20); *Boston*, 3, *ib.* 152); but the strict limitations introduced into the present Act should prevent any question of the sort arising for the future.

Intimidation may also be produced by stationing agents outside of or in the immediate vicinity of the polling booths, so as to overawe the voter as he goes to record his vote; but in such a case the Judge is disinclined to avoid the election, "unless satisfied beyond reasonable doubt that the agent did so interfere with the free exercise of the franchise of any voter, as to bring him within the 5th section (*pr. Manisty, J., Lichfield*, 3 O. & H. 138). In this case the defendant was a person of considerable local importance and influence, being a magistrate, a poor law guardian, a town councillor, and a trustee of various local institutions. He himself was stationed in front of the polling booth, and ticked off the names of the voters on the register, while he urged the poorer voters as to the way they should vote. His servant, who was also present, on seeing a voter coming up with opposition colours, exclaimed, "We will remember him another day." The Court decided that such canvassing was illegitimate, but insufficient to avoid the election.

Agents outside
polling booth.

(e) "Any temporal or spiritual injury, damage, harm or loss."—A. *Temporal*.—The principal instances of

Sec. 2. intimidation falling under this head will be found in the case of the indirect, but not the less "undue," influence practised by landlords on their tenants, employers on their workmen, or customers on their tradespeople.

N. Norfolk case. It is not wrong for a landed proprietor to canvass his own tenants, provided he uses no unfair means to secure their votes. Thus, in the *N. Norfolk* case (1 O. & H. 237) a landlord canvassed his tenantry, but it was proved that they were all ready and willing to vote on his side, and that no undue influence was used. In that case Lord Blackburn said, "If he had been shown to tyrannise over his tenantry, evicting them from their dwellings, or if he had been guilty of any other act of tyranny, that would have been undue influence on his part, and would have avoided the election." And he adds (p. 240), "I take it that where a tenant holds his land from year to year, and the landlord can at any time give six months' notice to quit, the landlord has a perfect right to choose his tenant, and turn him out; but if the landlord threatens to inflict, or does inflict, that turning out of his tenant for his vote, that is inflicting harm or loss within the meaning of the Act."

Petersfield case In the *Petersfield* case (2 O. & H. 94) it was proved that a Mr. C. had, twelve years before the election, let a cottage to one G. (who was not at the time a voter), on the condition that, if there should be an election, and the respondent's party wanted a vote, G. should vote for that party. A few days before the poll, C. reminded the tenant's wife of this condition, saying, "I think it was named to your husband when he took the house." Mellor, J.,

refused to regard this as a threat, but observed, "If this had been a recent letting, and if it had been a condition that the tenant should vote as his landlord dictated, and then the landlord's agent, in the presence of the sitting member, had referred to the condition when canvassing the tenant, I should have been very slow indeed to decide that that might not be a case of undue influence."

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In the *Galway (county)* case (2 O. & H. 54) Keogh, J., Galway case. refused to invalidate an election because the Marquis of Clanricarde said to his tenants, "If you can vote for my friend Captain T., I shall be delighted if you will do so; if you cannot vote for him, at all events stay at home, and do not vote against him" (*cp. Galway, borough*, 1 O. & H. 306).

The mere fact that tenants, who were in arrear of rent, all voted the way their landlord wished, is, in the absence of any proof that there was an understanding that they should not be pressed for their rent, insufficient evidence of undue influence (*Windsor*, 1 O. & H. 6).

Willes, J., declared the *Westbury* election void Employers. on the ground of intimidation by an employer of Westbury case. his workmen. It was proved that he had threatened to dismiss all who voted against him. "If," said the learned Judge, "he had threatened the lives or limbs of the men, there could be no doubt that that would have been within the section; but it is not mere poetry to say—

"You take my life

When you do take the means whereby I live."

A man who is sent out to live upon the charity of his fellow workmen, or to go to the workhouse with

Sec. 2. his family, unless he does a particular thing, is intimidated." (1 O. & H. 51, 52.)

Provided the motive is the inducing a man to vote in a particular way, it is immaterial what the nature of the damage or loss, or in what manner practised, and whether directly or indirectly, personally or by agents. Whether the voter be the person ill-treated, or whether the ill-treatment be violence or damage done by the removal of custom or business or employment, is immaterial. If it is done with a view to affect votes or interfere with the free exercise of the franchise, it is within the prohibition of the section. (*Blackburn*, 1 O. & H. 204.) Of course there may be mixed up with the political motive in getting rid of a workman, the genuine desire to replace him by another for other reasons, and it is impossible to say that he should, merely because an election is at hand, abstain from dismissing him; but employers so acting would be always well-advised to preserve clear evidence that they were actuated by other than political motives (*pr. Willes, J., Blackburn, ubi sup.; N. Norfolk*, 1 O. & H. 241).

Undue influence
by workmen.

Undue influence may also be exercised by workmen upon their fellow workmen by preventing them from continuing at their work and so on. And where this occurs through the instigation of their employers (as where the masters stood looking on and refused to interfere and agency was proved), the election is avoided (*Blackburn, ubi sup.*).

As agents of
their masters.

But the evidence of such treatment must be clear. The mere suspicion of insensible influence is insufficient (*Lichfield, ib. 28*).

In cases involving loss of custom to tradespeople, &c., it is often difficult to say whether the loss is such as properly falls within the section. Sec. 2.
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In the *N. Durham* case (2 O. & H. 158), Lord Custom. Bramwell appears to have rested the illegality of threatening voters with loss of custom, if they did not vote in uniformity with the wishes of their customers, on the extent to which such threats are practised.* While, in the *N. Norfolk* case (1 O. & H. 241), Lord Blackburn made it depend on the amount of the loss inflicted. If the loss be such as "would seriously affect the saleable value of the good-will of the man's business, it would be a loss. The matter must be weighed as a question of degree." But the true test of the legality or otherwise, of such influence as customers are liable to exercise over their tradespeople, appears rather to be, whether the threat to inflict upon them damage or loss by withdrawing their custom, if they vote or refuse to vote in a particular manner, was such as, under the circumstances of the case, and considering the voters' calling and position in life, would be calculated to influence them. "What difference is there," asked Lord Bramwell (*N. Durham, ubi sup.*), "between the case of a landlord who will not have a man for his tenant, and a customer who will not have another for his grocer, butcher, or publican, because he held different political opinions? Absolutely, none."

* "I am of opinion that it is not actually unlawful. I suppose it is open to a man to say, 'I choose to deal with you, not in accordance with the merits of the commodities you sell me, but according to your politics.' Though it is not unlawful in the sense of being punishable like violence, yet it has undoubtedly this characteristic of illegality about it, namely, that if, as in this case, it prevails to a large extent, it frustrates the objects of those who are guilty of it," i.e., by avoiding the election.

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The circumstances of any particular case may be such as to negative altogether the suspicion of undue influence. They may, on the other hand, be very strong evidence of an intention to influence a vote, or lastly they may be compatible with either view; in which case, a jury would probably not hesitate to give the customer the benefit of the doubt, although a suspicion of political bias would be raised (*Blackburn*, 1 O. & H. 205; *cp. Down*, 3 *ib.* 136). But, in any case, the loss must not be too remote (*N. Norfolk*, 1 O. & H. 242).

B. *Spiritual*.—The definite terms “temporal or spiritual loss, &c.,” were substituted in this section for the more general words in the corresponding section of the Act of 1854, “or in any other manner practise intimidation,” which were held to cover the case of spiritual intimidation.

Influence of
the Clergy.

In the case of the priests and clergy, as in the case of landlords and other classes, it is only the abuse of their influence that is struck at by the section. The Catholic clergy have a right to address their congregations, to tell them that one man is for the country, that another man is against the country. But they must not refuse the rites of the Church, in order to influence votes at an election (*Galway*, 1 O. & H. 307); and the *Mayo* election, 1847, was avoided, because the priest told the people from the altar that “the curse of God would come down upon anyone who voted for Colonel H.; and that if they were dying, he would not give the rites of the Church to anyone voting for him” (*W. & D.* 1).*

* Amongst the earlier cases the following may be referred to, *Sligo*, 2 P. R. & D. 258; 1st *Mayo*, *ib.* 201.

“The Catholic priest has, and he ought to have, great influence. In the proper exercise of that influence on electors, the priest may counsel, advise, recommend, entreat and point out the true line of moral duty, and explain why one candidate should be preferred to another, and may, if he think fit, throw the whole weight of his character into the scale; but he may not appeal to the fears or terrors or superstition of those he addresses. He must not hold out hopes of reward here or hereafter, and he must not use threats of temporal injury, or of disadvantage, or of punishment hereafter. He must not, for instance, threaten to excommunicate, or to withhold the Sacraments, or to expose the party to any other religious disability, or denounce the voting for any particular candidate as a sin or as an offence involving punishment here or hereafter. If he does so with a view to influence a voter or to affect an election, the law considers him guilty of undue influence.” * (*Pr. Fitzgerald, J., Longford, 2 O. & H. 16; cp. Galway, ib. 57; Tipperary, ib. 31.*)

(f) “*To induce or compel such person,*” &c.—The undue influence of whatever kind must be exercised against the elector himself. It would not be enough to show that indirect intimidation had been brought to bear against him by trying to influence his family or relatives, &c.

(g) “*Abduction, duress.*”—The case of forcible abduction has been already referred to (*supra*, p. 47).

Instances of abduction, &c., falling under the present head, are such as occurred in the *Staleybridge*

* *Cp. the language of Sir S. Romilly in Huguenin v. Baseley, 14 Ves. 288.*

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Fraudulent
device.

case (20 L. T. 78), where voters were made drunk and kept out of the way in order to prevent them from voting (*cp. Cockermouth*, 2 P. R. & D. 166; *Lisburn*, W. & B. 227).

(h) “*Any fraudulent device or contrivance.*”—In the *Coventry* case (1 O. & H. 105), a case occurred where one, B., had been induced to personate and vote in the name of D., as to which Willes, J., said that, “It might be laid in the petition that an agent of the member had got voters personated, and that that, if established, would be sufficient fraud at Common Law to set aside the election.” But the act must be knowingly and wilfully committed by the agent, so that if the agent, *bonâ fide*, believes that the person he induces, in fact, to personate another, is really the voter whom he personates, it will not affect the election (*Gloucester*, 2 O. & H. 62). And so, where voters’ cards, printed just like ballot papers, and having a mark after respondent’s name, were sent out with an intimation that if the ballot papers were not marked *in the same manner*, the vote would be void, the Judge refused to declare it a fraudulent device, because he could not believe it was done with a fraudulent intention (*ib.*).

In the *Northallerton* case (1 O. & H. 169), where two voters had agreed to pair, and not to vote, and subsequently one of them did vote, acting upon information he had received that the other had also broken his promise, Willes, J., held, in the absence of any *mala fides* being shown, that the vote was good.

Down case.

In the *Down* election (3 O. & H. 115), it appeared that a Mr. F., who was one of the respondent’s

principal agents, had publicly declared that he had discovered a plan for defeating the secrecy of the ballot. An article on the subject afterwards appeared in the "Belfast News Letter," containing the following remark, "We were previously aware that the Ballot Act did not afford perfect security, and this opinion has been strengthened by the clear and convincing statement made in our presence by Mr. F." It was proved that Mr. F. ordered and distributed, at the respondent's expense, 10,000 copies of the newspaper issue containing this article. On the question whether it was a fraudulent device within the section, Baron Fitzgerald held that it was not, on the ground that no individuals had been specified or ascertained as having been affected thereby. He also refused to avoid the election under the common law, on the ground that having endeavoured to determine the extent of the effect produced by the article, and after having made a fair deduction from the only class of voters with which he thought it possible that a device of this kind could obtain credence, the residuum appeared to be wholly inappreciable.

Sec. 2.
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Barry, J., on the other hand, held that the election ought to be avoided on the following grounds:—(1.) The Ballot Act having for its prime object the conferring upon voters the right of voting in secret, any device calculated to mislead voters into the belief that the Act of Parliament is abortive, is unconstitutional and illegal, and sufficient to avoid any election. (2.) If, owing to the more recent introduction of the Ballot Act, it were not possible to range such a device under any of the

Down case.

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Down case.

well-known heads of electoral corruption, a precedent should be made. (3.) But it is clearly an instance of undue influence, and we are to consider whether in this particular case we have reasonable grounds for supposing that it existed to such an extent as to have prevented the election from being a free one, and with a majority of only 20 out of 11,500 votes polled, it is impossible to believe that, considering the "gigantic scale" of the device, a larger number were not influenced. (4.) But, in any case, the rule laid down by Lord Bramwell in the *N. Durham* case (2 O. & H. 157), applies, that where the practice has been so general that the result may have been affected, it is no part of the Judge's duty to enter into a kind of scrutiny.

The latter opinion seems to be most in accordance with the principles already shown to be established law. The section, it is true, requires proof of undue influence in particular cases. But that general intimidation avoids an election at common law is beyond a doubt, and that such intimidation is none the less effective because in the form of a fraudulent device cannot be seriously questioned. Indeed, Fitzgerald, J., admitted that its consequence "would or might create alarm in the minds of persons who believed it." Then, it being proved that 10,000 copies had been distributed in a constituency numbering 13,000, of whom 11,500 only voted, there was sufficient *prima facie* evidence of general intimidation at common law; in which case the rule laid down by Lord Bramwell, and cited by Barry, J., should, it is submitted, have been followed.

Undue influence by

There remains to be considered the case of those

whose position or office may enable them to exercise an undue influence over the electors. Although not included in the above section, such interference has been at all times severely denounced and prohibited by resolutions of the House of Commons, and many Acts have been passed, directed specifically against the several classes of persons from whom such undue influence may proceed. Thus, in 1641, a resolution was passed, declaring that, "whereas the House of Commons has received information, that letters from peers are directed to boroughs that now are to make election of members to serve in this Parliament, they conceive that all letters of that nature from any peers of this realm do necessarily tend to the violation of the privileges of Parliament and the freedom of elections, &c." And by the 2nd Wm. & Mary, c. 7, the nomination of members for the Cinque Ports, claimed by the Lord Wardens as of right, was pronounced to be contrary to the laws and constitution of this realm and void. It also appears from the *Westminster Case* 1775 (1 Doug. 160), that a resolution to the effect that "it is a high infringement of the liberties and privileges of the Commons of Great Britain, for any Lord of Parliament, or any Lord Lieutenant of any County, to concern themselves in the election of Members to serve for the Commons in Parliament," was renewed at the beginning of every session ever since the 3rd January, 1701.

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persons in high office, &c.

Resolutions of the Commons against interference in elections by peers;

A similar resolution was passed in 1802, on the Union with Ireland, which has been adopted as a Sessional resolution ever since.

Still stronger was the resolution of the 10th Ministers; December, 1779, against the interference of Ministers.

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“It is highly criminal in any Minister or Ministers, or other servants under the Crown, directly or indirectly, to use the powers of office in the election of representatives to serve in Parliament, and an attempt at such influence will at all times be resented by this House, as aimed at its own honour, dignity and independence, as an infringement of the dearest rights of every subject throughout the Empire, and tending to sap the basis of this free and happy Constitution” (37 Journ. 507.) The *Dover* petition (W. & B. 132) turned upon a question of such interference.

Bishops ;

The military ;

Government
officials.

Galway case.

Similar resolutions have been adopted against the interference of Bishops (14 Journ. 37, 16 *ib.* 548), and the Military (4 *ib.* 346 and 24 *ib.* 37.) And now by the 10 and 11 Vic. c. 21, provision is made for confining the troops to barracks on the day of election. A variety of Acts, moreover, prohibit Government officials in the Excise, Customs, Post-office, and Police services from endeavouring “by word, message, or writing, or in any other manner whatsoever, to persuade any elector to give, or dissuade him from giving his vote.” (See also May’s “Law of Parliament,” p. 719.)

In the *Galway (county)* case (2 O. & H. 54), where it was sought to upset the election on the ground that a peer had illegally contravened a resolution of the House of Commons by canvassing his tenants, the judge refused to avoid the election, on the grounds that (1) the Resolution had not the force of a Statute; and (2) such resolution was not intended to deprive peers who are landlords of their legitimate influence, which, in this case, had not been exceeded.

Of course, where no more than the legitimate influence attaching to any person of whatever class has been exercised, no question of undue influence could arise. For "the law cannot strike at the existence of influence. The law can no more take away from a man who has property, or who can give employment, the insensible but powerful influence he has over those whom, if he has a heart, he can benefit by the proper use of his wealth, than the law can take away his honesty, his good feeling, or any other qualities which give a man influence with his fellows. It is the abuse of influence with which alone the law can deal, and influence cannot be said to be abused, because it exists and operates" (*pr. Willes, J., Lichfield, 1 O. & H. 28; cp. Windsor, ib. 6*). But the ruling of Keogh, J. (in the *Galway* case, *ubi sup.*), that undue influence, if proved, would not affect an election, because it is merely contrary to a resolution of the Commons, which has not the force of law, will not, it is submitted, hold, inasmuch as s. 3, together with the definition of Corrupt Practices in the P. E. Act, 1868, declares undue influence, as "recognised by the common law of Parliament," to be an offence within the Act. And it is submitted that such resolutions as the above constitute a portion of the common law of Parliament.

Secs. 2, 3.

Legitimate
influence.

3. The expression "corrupt practice" as used in this Act means any of the following offences; namely, treating and undue influence, as defined by this Act, and bribery, and personation, as defined by the enactments set forth in Part III. of the Third Schedule to this Act, and aiding, abetting, counselling, and procuring the commission of the offence of personation, and every offence which is a corrupt practice within the meaning of this Act shall be a corrupt practice within the meaning of the Parliamentary Elections Act, 1868.

What is corrupt
practice.31 & 32 Vic.
c. 125.

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This section declares (1) that corrupt practices shall include treating and undue influence (as defined by this Act), as well as bribery and personation (or aiding, abetting, &c., of the same), as defined by the sections of previous Acts set forth in Schedule 3; (2) that the same offences shall be corrupt practices within this Act and the P. E. Act, 1868.

Treating and undue influence have been considered above. Bribery and personation next claim attention; but first it may be convenient here to notice the definition of Corrupt Practice in the P. E. Act, 1868:—

“*The Parliamentary Elections Act, 1868.*”—The unrepealed definition of corrupt practices contained in s. 3 of this Act is as follows:—

P. E. Act, 1868,
s. 3.

“*Corrupt Practices or Corrupt Practice* shall mean “bribery, treating and undue influence, or any of “such offences, as defined by Act of Parliament, or “recognised by the common law of Parliament.”

Personation was thus not included in the above definition, and was therefore not a ground for a petition under the Parliamentary Elections Act, 1868. By virtue, however, of the present section of the new Act, both personation, and the aiding, abetting, &c., of the same is a corrupt practice, for which an election may be avoided. The same may be said of the offence of a candidate or election agent knowingly making a false declaration as to expenses, which is declared to be a corrupt practice by s. 33 (7).

“*The Common Law of Parliament.*”—The Law and Custom of Parliament (*Lex et Consuetudo Parlia-*

menti) is admitted to be part of the unwritten law of the land, and as such is only to be collected, according to the words of Sir E. Coke, "out of the rolls of Parliament and other records, and by precedents and continued experience;" to which it is added that, "whatever matter arises concerning either House of Parliament ought to be discussed and adjudged in that House to which it relates, and not elsewhere." (4 Inst. 15.) Hence, originally, all questions of controverted elections were tried and determined by the whole House of Commons, but under that system the perversion of justice was so notorious, that in 1770 the House consented to submit the exercise of its privileges to a tribunal constituted by law, in the form of election committees, the jurisdiction of which was in turn transferred by the P. E. Act, 1868, to the Courts of Law, where, by the Parliamentary Elections and Corrupt Practices Act, 1879, all such trials are now conducted by two Judges instead of one. The House has, however, no cognisance of these proceedings until their termination, when the Judges certify their decision in writing to the Speaker, which is final to all intents and purposes. (May's "Law of Parliament," 721.)

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I.—BRIBERY.

At the Common Law.—"Bribery at elections, taken generally, was always, and still is, punishable at common law" (*pr.* Lord Mansfield, in *R. v. Pitt*, 1 Wm. Bl., 383); and Willes, J., in the *Lichfield* case (1 O. & H., 26), said, "Bribery at common law, equally as by Act of Parliament, avoided any election at which it occurred."

Bribery, at
common law.

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Similarly, the preamble of the 49 Geo. III. c. 118, runs—"Whereas the giving or procuring to be given, or promising to give or to procure to be given, any sum of money, gift, or reward, or any office, place, employment, or gratuity, in order to procure the return of any member to serve in Parliament . . . is contrary to the ancient usage, right and freedom of elections, and contrary to the laws and constitution of this realm," &c.

Common law definitions of bribery.

The following common law definitions of bribery which are found in the books, form the foundation of the statutory enactments on the subject:—

"Wherever a person is bound by law to act without any view to his private emolument, and another, by a corrupt contract, engages such person on condition of the payment or promise of money or other lucrative consideration, to act in a manner which he shall prescribe, *both parties are by such contract guilty of bribery*" (Lord Glenbervie, 2 Doug. 400). "Wherever it is a crime to take, it is a crime to give; they are reciprocal, and in many cases, especially in bribery at elections to Parliament, the attempt is a crime; it is complete on his side who offers it" (Lord Mansfield, in *R. v. Vaughan*, 4 Burr. 2,501).

Offer to sell vote.

Hence it has been argued that an offer by an elector to sell his vote was also bribery; but in the *Mallow* case (2 O. & H. 21), Morris, J., refused to strike off the votes of men who had offered, but without success, to sell their votes to either candidate, on the ground that no precedent for such a course had been cited. The *asking* for a bribe was constituted an offence by statute, 2 Geo. II. c. 24; but that Act was repealed by the C. P. Act, 1854.

No cases of wagers seem to have come before the election Judges, nor does this form of corruption appear to be affected in any way by the Corrupt Practices Prevention Acts. Numerous cases, however, are to be found in the Reports of the Election Committees, where bets between electors, or electors and non-electors, have been held to invalidate their votes. The decisions of committees have not been uniform in declaring every wager made by an elector to be equivalent to a bribe, though some went so far as that (*New Windsor*, K. & O., 195; *Worcester*, *ib.* 255); but whenever the circumstances of the case showed the vote to have been influenced by the bet, whether made between electors and non-electors or not, the vote was always held bad (*Bragg's* case, *New Windsor*, K. & O. 191; *Worcester*, *ib.* 255), no matter what the amount of the wages (*Burnham's* case, *New Windsor*, *ubi sup.*); the principle being, as was stated by Lord Mansfield (in *Allen v. Hearn*, 1 T. R., 56), that "from the moment the wager is laid both parties are fettered; it is laying them under a pecuniary influence."

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Wagers.

A fortiori, if a candidate or his agent bets with the electors that he will not be returned, it is a bribe (*Anon. Lofft*, 502).

But there is nothing illegal in two voters pairing, *Pairing.* *i.e.*, the one agreeing not to vote if the other does not. "It is not recognised by the law, and is a mere honourable engagement between the parties" (*Northallerton*, 1 O. & H. 170).

The common law, moreover, avoids an election where general bribery has been proved, although no act of bribery has been traced to the candidate or his

General bribery.

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agents (*Guildford*, 1 O. & H. 15; *Lichfield*, *ib.* 26), and in declaring the *Beverley* election void on this ground (*ib.* 147), Baron Martin observed as follows: "A man giving a vote for a Member of Parliament under what the law deems undue influence gives no vote at all. This is the common law, it depends upon no statute, and it is a consequence of it that, if the Judge is satisfied that the votes of a considerable number of persons were corrupted and bribed, however innocent the candidate may be, and though himself unconnected with corrupt practices, his election is void by reason of the incapacity of the voters, because of general corruption, to give valid and effective votes." (See remarks of the same Judge in *Bradford* case (1 O. & H. 30; *cp. Stafford*, 1 O. & H. 234; *Drogheda*, *ib.* 257; *Bridgwater*, 1 O. & H. 115). And so the P. E. Act, 1868 enacted (s. 17), that "any charge of a corrupt practice may be gone into and evidence in relation thereto received before any proof has been given of agency," because general bribery which could thus be proved is sufficient to avoid an election, without any proof of agency. And it is no answer that the general bribery took place some time before the election (*Sligo*, 1 O. & H. 300).

C. P. Act, 1854,
ss. 2 & 3.

The C. P. Act, 1854, repealed all the previous Acts on the subject and in ss. 2 & 3 laid down the elaborate definitions of bribery, which, being incorporated with the new Act, contain, together with the enactments making corrupt payment of rates, bribery (schedule 3, pt. 3.), the existing law on the subject.

Taking first, the clauses of the C. P. Act, 1854, it

will be observed that s. 2 defines bribery on the part of the briber only, while s. 3 contains the correlative definitions of bribery in the bribee, or person bribed.

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Sec. 2 is divided into five sub-sections, of which the first and second deal with attempts to bribe individual voters, the third and fourth are directed against the more wholesale traffic in votes, which, in a small constituency, amounts to the purchase of the seat; while the last applies to all persons who, whether as candidates, agents, or merely as contributors to a candidate's expenses, pay money either to any person, or into a bank, or otherwise on his account, with the intention that it should be expended in bribery by that person or by anyone else; or who have knowingly repaid, or caused to be repaid, to anyone moneys so spent.

"Every person who shall directly or indirectly, by ^{Sub-sec. 1.}
 " himself or by any other person on his behalf, give,
 " lend, or agree to give or lend, or shall offer, promise,
 " or promise to procure or to endeavour to procure,
 " any money, or valuable consideration to or for any
 " voter, or to or for any person on behalf of any voter,
 " or to or for any other person in order to induce any
 " voter to vote, or refrain from voting, or shall cor-
 " ruptly do any such act as aforesaid, on account of
 " such voter having voted or refrained from voting at
 " any election" [shall be guilty of bribery and punishable accordingly].

"*Every person,*" i.e., not merely candidates and their agents. But, of course, in the absence of proof of agency, the effect of such bribery by independent parties would be, merely that their votes would be struck off on a scrutiny, and not the

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avoidance, *ipso facto*, of the seat, otherwise a candidate might be at the mercy of any unprincipled opponent who chose to bribe, as if on his behalf. (See note (b) s. 5, *infra*, p. 118, 120.)

. “*Directly or indirectly.*”—These words are not synonymous with those which follow, “by himself or by any other person.” The former apply to cases where, on other occasions than at the election itself, *e.g.*, at a previous test ballot (*Britt v. Robinson*, 5 L. R. C. P. 503), but still with a view to the election, bribery is practised. (See note (d) to s. 1, *supra*, p. 42.)

Lend.

“*Give, lend or agree to, &c.*”—Both the giving (or offering) and the accepting (s. 3) of loans are hereby for the first time declared to be bribery, although the practice had previously been severely condemned by election committees. Thus, in the *Lyme Regis* case (B. & Aust. 454, at p. 533), the committee reported that a practice, “insidiously corrupting and demoralising,” had for some years prevailed, of lending money upon notes of hand and other securities. And in the *Rye* case (2 P. R. & D. 121) it was reported that one, S., who had for many years exercised great influence at the elections, had, in order to maintain his influence, corruptly lent money to the amount of £15,000. Loans, however, need not be thus systematic to come within the Act; and so, provided the intention to corrupt be proved, a case like that at *Ashburton* (W. & Br. 1) will now be held to avoid the election. There a voter was prevented from voting by a sheriff’s man, who would have arrested him on a writ of *ca. sa.*, had not an agent of the sitting member paid the money, taking the voter’s bond

and note of hand for the amount. The committee, however, refused to avoid the election in this case, the voter having stated that he had always intended to vote for the sitting member if he could get to the poll; but a similar proceeding, where a voter was released from gaol in order to vote, by payment of his debt, was held to be bribery (*Londonderry*, 1 O. & H. 275; *cp. Harwich*, 2 P. R. & D. 230). In the *Oldham* case (1 O. & H. 161) a question arose whether an order given to a voter by the relieving officer, about a month before the election, for a coffin in which to bury his wife, under promise of repayment by weekly instalments (which were not all repaid until after the election) constituted a loan. Blackburn, J., refused to strike off the vote, but allowed the point to be reserved for the Court of Common Pleas.

Sec. 3.

Loans
by relieving
officer.

“Offer, promise, or . . . endeavour.”—Under the present Act the mere offer of a bribe, whether in the shape of money or valuable consideration, or of any office, place, or employment (*e. g.* the offer to procure for a voter a seat in the Town Council (*Waterford*, 2 O. & H. 25), held to be bribery under sub-sec. 2), and whether accepted or not, is a legal offence (*Coventry*, 1 O. & H. 107); the question being *as to the motive of the briber, not as to the effect on the bribed* (*Martin, B., in Westminster*, 1 O. & H. 89). But “the Judge must be satisfied that the conversation out of which a bribe is sought to be extracted really had a special character, and that it was not a mere general commendation of the candidate by his agent as being a good man for the place” (*Northallerton*, 1 O. & H. 168). “Offers

Offer, or
attempt.

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or conversations, unaccompanied by any acts, should be much more strongly proved in evidence than where some clear definite act has followed the alleged offer or conversation" (*Mallow*, 2 O. & H. 22; *cp. Hereford*, 1 O. & H. 195; *Cheltenham*, *ib.* 64). So, in the *Aylesbury* case (W. & Br. 15), the sitting member was unseated for having, through his agent, bribed voters by promising them money for the hire of conveyances if they would vote for him. But the practice of the election committees was by no means uniform in this respect (*Ipswich*, B. & Aus. 260; *Wigton Burghs*, 2 P. R. & D. 137), although the common law, as laid down by Lord Mansfield (*R. v. Vaughan*, 4 Burr. 2,501), appears to have regarded the bribe as "complete on his side who offers it."

The mere offer of a bribe being an offence, whether accepted or not, it follows that where a voter is sent money to vote one way and then votes on the opposite side, that is bribery (*Blackburn*, 1 O. & H. 202); and *à fortiori*, "A man who votes for one candidate, after having received money for promising to vote for the other, is guilty of bribery equally as if he voted according to his promise, even if at the time he promised he had no intention of fulfilling it" (*Lichfield*, 1 O. & H. 29). And so, it is equally bribery to attempt to bribe a voter who, though on the register, was disqualified by non-residence from voting, and in fact did not vote (*Guildford*, 1 O. & H. 15).

Promise to
endeavour to
procure.

So, too, a "promise to endeavour to procure money, &c.," is made equivalent to actual bribery. This had already been decided to be bribery under

the common law of Parliament, as appears from the *Plymouth* case (2 P. R. & D. 238) where the return was avoided on the ground that the candidate had bribed "by the promise to use his influence to obtain a situation in the Excise, &c."

Sec. 3.
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"*Money or valuable consideration.*"—The words "valuable consideration" have been held to mean "valuable consideration estimated in money" (*pr.* Alderson, B., in *Cooper v. Slade*, 6 E. & B. 447, and 6 H. L. C. 747); but it need not be shown that the gift consisted of money. So a promise of refreshment *in futuro* as distinguished from food, given to be consumed on the spot, is bribery (*Bodmin*, 1 O. & H. 124, and *Tynemouth*, 2 P. R. & D. 186); and "when a thing is done in the way of bribery, though it may be a valueless thing, it is still bribery" (*Bewdley*, 44 L. T. 283).

Any money or
valuable
consideration.

The offer of office or employment, which is specially provided for in the following sub-section, would not be a valuable consideration in this sense. But in the *Launceston* case (2 O. & H. 122), where the sitting member, on whose estate, near the town, the large quantity of rabbits had given rise to great dissatisfaction to his tenants, refused to abate the nuisance until just before the poll, when he gave his tenants leave to destroy and sell them, Mellor, J., avoided the election, saying, "What was done was done, not so much from an abstract sense of justice, as from a desire to influence the election."

So a gift of boots has been held to be bribery (*Barnstaple*, 2 P. R. & D. 208). In the *Huddersfield* case (*ib.* 130), bribery took the form of "colourable payments in their bills for the last election, of the

Sec. 3. discounts taken off from their previous bills," &c.
 — (cp. *Cambridge*, B. & Arn. 190).

The following decisions as to what constitutes bribery are but a few out of the almost endless variety of ways, in which corruption may be practised.

Payment of
debts.

In the *Harwich* case (1 P. R. & D. 75) one man was bribed by discharging a debt due from him, and so releasing his vessel, which had been seized as security therefor, and others received money under the pretence of loss of time and demurrage on the detention of themselves and their vessels during the election.

Charity.

Gifts under colour of charity, as in the *Boston* case (2 O. & H. 161), where a person intending to contest the seat distributed large quantities of coal among the poor about a month before the election, but when in fact a vacancy was not immediately anticipated (cp. *Youghal*, 1 *ib.* 294; *Windsor*, *ib.* 2). But subscriptions to charities are not necessarily corrupt (*Westbury*, 1 O. & H. 50) unless the circumstances show them to be so, as when a candidate, having been in the habit of spending £300 in that way, increased it in view of an election to £720 (*Stafford*, *ib.* 230); nor, of course, are isolated gifts to poor persons in distress and need of assistance necessarily bribery, unless the circumstances in each case warrant the inference of a corrupt motive. Thus the gift by one candidate of £1 to a voter who had promised him his vote (*Windsor*, 1 O. & H. 2), and by another of 5s. to the wife of his tenant, who was in great distress (*Tamworth*, 20 L. T. 181), was, under the special circumstances of each case, held not to be bribery.

As was seen in the case of "Undue Influence" (*suprà* p. 54), a candidate may indulge his charitable instincts under the influence of very mixed motives, and it then becomes very difficult to say which predominated, the *bonâ fide* desire to relieve distress, or the political anxiety to secure votes. In such cases, the Court would probably incline to give the respondent the benefit of the doubt, as was apparently Lord Bramwell's view in the second *Windsor* case (2 O. & H. 89). Here the candidate, *some long time before* the election, distributed £100 among his tenants, from whom he received some £3,000 a-year in rent, and who had been caused great distress by a flood. The learned Judge said, "It is certain that the coming election must have been present to the respondent's mind when he gave away these things. But there is no harm in it, if a man has a legitimate motive for doing a thing, although, in addition to that, he has a motive which, if it stood alone, would be an illegitimate one. He is not to refrain from doing that which he might legitimately have done on account of the existence of this motive, which, by itself, would have been an illegitimate one." (*cp. Carrickfergus*, 3 O. & H. 90). See the dictum of Pollock, B., to the same effect in the *Salisbury* case (4 O. & H. 21). And in the *Boston* case (2 O. & H. 161), Grove, J., used these words: "It might be a doubtful question whether, assuming two motives to exist, the one being pure and the other with the intention to corrupt, you could exclude the corrupt intention and rely wholly upon the pure intention. I think that must be rather a question of degree."

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 When due to mixed motives.

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Charity at
election times
to be avoided.

But as it is unquestioned that, if a corrupt purpose "is found to be the object of the donor, it matters not under what pretext or in what form, to what persons, or through whose hands the gift may be bestowed, or whether it has proved successful or not" (*Plymouth*, 3 O. & H. 107); the recent remarks of Bowen, L.J., in the *Wigan* case (4 O. & H. 14), will be generally deemed to contain the soundest advice: "*Charity at election times ought to be kept by politicians in the back ground. . . . I think it will be generally found that the feeling which distributes relief to the poor at election times, though those who are the distributors may not be aware of it, is not really charity, but party feeling, following in the steps of charity, wearing the dress of charity, and mimicking her gait.*"

Over payments.

An excessive price paid for a horse (*Cockermouth*, 2 P. R. & D. 167), or for pigs (*Huddersfield*, W. & B, 38), was held to be bribery. But overpayment of agents was not considered bribery in the *Youghal* case (1 O. & H. 296); this, however, will no longer be the case.

In the first *Sligo* case (2 P. R. & D. 258) bribery took the form of inducing a voter to absent himself by the payment of an outstanding election account; while in the second *Sligo* case (*ib.* 299) voters were bribed to refrain from voting by having sums paid to themselves or their wives, which they afterwards returned. The hiring of rooms has frequently been held bribery (*Huddersfield*, *ubi sup.*); and in the *Dartmouth* case (W. & B. 21), £20 paid for a room in a house, the yearly rent of which was £18, for the candidate's wife to hear the speeches from, was declared to be bribery.

Payments for the admission of freemen, though always regarded with suspicion, have not, in the absence of any corrupt promise, always been held to avoid the election (*Worcester*, C. & D. 173); and if made as long as a year before the election they are not considered bribery (*Beverley*, 1 O. & H. 145). But wherever the motive is corrupt, such payment is clearly illegal (*Bayntun v. Cattle*, 1 M. & R. 268).

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Payment of freedoms.

The qualification of freedom has, however, lost its importance now that the franchise rests upon a household basis; and the question arises rather as to the payment of rates for the purpose of enabling a voter to be registered.

Corrupt payment of rates.

The corrupt payment of rates was expressly declared to be bribery by ss. 49 of the R. P. Acts, 1867 and 1868, which, with a similar enactment in the Universities Elections (Scotland) Act of 1881, as to the corrupt payment of registration fees, are incorporated in the present Act (Schedule 3, pt. iii. p. 319).

These several enactments being substantially the same, it will suffice to quote here the provision of the English Act, 30 & 31 Vic. c. 102, s. 49, which is as follows:—"Any person, either directly or indirectly, "corruptly paying any rate on behalf of any rate-payer for the purpose of enabling him to be "registered as a voter, thereby to influence his vote "at any future election, and any candidate or other "person, either directly or indirectly, paying any rate "on behalf of any voter for the purpose of inducing "him to vote or refrain from voting, shall be guilty "of bribery, and be punishable accordingly; and any "person on whose behalf and with whose privity any "such payment is made, shall be also guilty of

R. P. Act, 1867, s. 49.

Sec. 3. "bribery and punishable accordingly." (For the punishment, *see* s. 6 of Act, 1883.)

Under this section the payment must be made *corruptly* and in order thereby to influence the vote (*Cheltenham*, 1 O. & H. 63). Therefore where one person paid the rates for another, merely as a friend, and because the voter was anxious to get on the register, but could not afford to pay the rates himself, and it was proved that nothing had been said as to how the payee should vote at the next election, the validity of the vote was allowed (*Oldham*, 1 O. & H. 164-166; *cp. Wigan*, *ib.* 190).

Payments at
Revision
Courts.

Similarly, as to payments for attendance at Revising Barrister's Courts, Lord Blackburn, in the *Hastings* case (*ib.* 219), said: "The law has never yet said that to pay a person any money or to assist him in any way in being put on the register should be an offence at all." Therefore, as the same learned Judge said in another case, unless such assistance were given with the full intention thereby to induce the voter to vote on a particular side, which would be a matter to be collected from the whole of the facts, it would not be within the Act. "I certainly think it would be a wise thing on the part of all people to avoid making such payments *at any time*, because certainly it is always open to observation and inference that it may be for the corrupt purpose of inducing the vote, and may therefore be considered bribery" (*Taunton*, 1 O. & H. 184). In the latter case the payment was held to avoid the election, having been made only just before it took place in November, the Registration Courts having sat in September.

In some cases the payment of wages on the day of an election clearly amounts to bribery, as when a promise or offer is made to a voter that if he will come and vote for a particular person, he shall not lose his day's work (*Staleybridge*, 1 O. & H. 67); or that he shall be remunerated for any loss of time (*Simpson v. Yeend*, L. R. 4 Q. B. 626; *cp. Hastings*, 1 O. & H. 220). In the *Oldham* case (1 O. & H. 162) the vote of a labourer was struck off because he refused to vote until he was paid his wages and fare, upon which he received 5s. wages and 2s. 6d. fare, and voted. But where an employer paid the wages of all his men (irrespective of their political opinions) on the polling day, though, as a rule, they were not paid when not at work, and it was shown to be an isolated case, it was held to be a "matter of grace" only, and not within the Act (*Stroud*, 2 O. & H. 184). But where the agent told the employes that they would have a holiday, but would be paid as usual (contrary to the practice of two previous elections), it was held bribery (*Gravesend*, 3 O. & H. 84). In the *Liverpool* case (2 P. R. & D. 248) the sitting members were unseated because voters had received sums for having voted for the sitting members, under the name of a day's pay, or in compensation for the time alleged to have been lost by attending at the election. These payments were not beyond the average daily earnings they might have made; but from the disposition of the various polling places, every voter might have polled without any such interruption of his employment as to occasion loss of wages or need for refreshment.

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Payment of wages.

There can be no doubt, said Lord Blackburn, in

Payments for loss of time.

Sec. 3.

the *Taunton* case (1 O. & H. 183), that payments when given to a person for loss of time in coming to deliver his vote are payments for voting, and are distinctly struck at by the Act. And so the payment of a substitute to do the voter's work while absent is also bribery (*Plymouth*, 3 O. & H. 107).

And there will be the less excuse for anything of the kind under the new Act, which provides in effect that there shall be for every resident voter in a borough a polling place within one mile of his residence, and for every resident voter in a county (or agricultural borough) a polling place within three miles of his residence (s. 47).

Similarly, the *Devonport* election was avoided by a committee, because 70 voters, being dockyard men whom the Government allowed to be absent, without loss of wages, for an amply sufficient time, received, a fortnight after the election, 10s. each at one of the sitting member's committee rooms (Min. 5 May, 1866).

Amount
immaterial.

The amount of the bribe is wholly immaterial, provided the corrupt intention is proved. This, it appears, was always the case at common law; as Willes, J. (in the *Westbury* case, 1 O. & H. 52) said: "By the common law of Parliament, a single bribe given by an agent at an election had the effect of avoiding that election." A good deal of doubt was thrown upon the point by an *obiter dictum* of Martin, B. (*Salford*, 1 O. & H. 142), to the effect that, "If I were to upset an election for single acts such as these (*e.g.*, because an imprudent man, *not the member himself but his agent*, gave 1s. to one and 6d. to another), it seems to me that the law would

be brought into contempt and ridicule." Perhaps, however, this disastrous result was more nearly being brought about by the fact, that other Judges (adhering more closely to the letter of the law, which prohibits "*any money*") gave contrary judgments (*see Blackburn*, 1 O. & H. 202; *Hastings*, *ib.* 218; *Shrewsbury*, 2 *ib.* 36; *Norwich*, 2 *ib.* 41). And now there can no longer be any doubt in the matter, inasmuch as sec. 22 of the new Act expressly relieves candidates from the consequences of such trivial acts by their agents, only in the case of *treating, undue influence, and illegal practice*, and upon the most stringent conditions.

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The fact that the voter to whom the bribe has been offered was, in fact, disqualified (*e.g.*, by non-residence, although his name was on the register), makes no difference. The law applies also to a person who may be *prima facie* entitled to vote; it is said expressly in s. 38 of the Act (17 & 18 Vic. c. 102) that the word "voter" shall mean any person who has, or who claims to have, a right to vote (*Guildford*, 1 O. & H. 15; *see Lichfield*, 1 O. & H. 29). And this is still the law, that definition not having been repealed by the Act of 1883.

"To or for any other person."—*See note on p. 85.*

"Or shall corruptly."—*See note on p. 86.*

Sub-sec. 2 of sec. 2 enacts as follows:—

"Every person who shall directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure or to endeavour to procure, any office, place or employment to or for any voter, or to or for any person

C. P. Act, 1863,
s. 2, ss. 2.

Sec. 3. "in order to induce such voter to vote or refrain
 "from voting, or shall corruptly do any such act as
 "aforesaid on account of any voter having voted or
 "refrained from voting at any election" [shall be
 guilty of bribery and be punishable accordingly].

Gifts and offers
 or promises
 of situations,
 places, and
 employment.

Under this sub-section are comprised, first, gifts, offers, or promises of permanent posts, offices, or employment, as, *e.g.*, a situation in the Excise (*Plymouth*, 2 P. R. & D. 238); secondly, gifts, &c., of temporary occupation or employment, in connection with the election itself, as, *e.g.*, the employment of men as watchers, runners, clerks, and so forth.

Permanent
 employment.

With regard to the offer or promise to procure permanent situations under Government or otherwise, wholly disconnected with the work of the election, in consideration of a particular vote being given, the nature of such acts is too obvious to require comment, but the corrupt intention to influence a vote must be proved. And so, in the *Penryn* Case (1 O. & H. 128), where the respondent's agent, without distinctly promising work to a man who applied to him for employment just before the election, commended his principal as the right man for the seat and said "if he has any employment to give, he will be sure to select people from this town," Willes, J., refused to avoid the election, saying: "I am clear, that where an unfavorable inference is to be drawn from the fact, that some person has been employed, one ought to take care to be quite sure that there is something more than merely getting the man's work for that which is its real equivalent." In the same case, it was proved that the agent sent another man who had asked him for work, to a person who gave a month's

work, a fortnight before and a fortnight after the election. Nothing was said to him as to his vote, until after he had been told where he should go and work, when on being asked if he intended to vote for the respondent, he replied "Yes," and did so. The learned Judge refused to regard these facts as constituting colourable employment, and remarked: "Unless the employment was colourable, unless, that is to say, it was employment only in name, and it was shown that the money was given either for doing nothing, or was given in excess for the services fairly rendered by the voter, there was no bribery" (*cp. Londonderry* 1 O. & H. 277).

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But the more frequent form of colourable employment was in the payment of large bodies of voters, and others, nominally for the purposes of the election as watchers, runners, clerks, messengers, and so forth, but really with a view to influencing the votes, by finding them a day's wages. Here the fact that no services of any value were rendered at all was sufficiently conclusive of the corruptness of the act, and elections have accordingly, on various occasions, been upset on this ground (*cp. Boston*, 3 O. & H. 153, where the Court passed in review several of the principal cases, and *Oxford*, 3 O. & H. 155). But where it could be proved that *bond fide* work was done, and that the payment was not substantially in excess of the ordinary rate of wages, the election was upheld (*Salisbury*, 4 O. & H. 23).

Employment at elections.

And now the law has been made considerably more stringent by the Act of 1883, not only will the colourable employment of voters for the purpose of securing their votes be still, as before, an act of

Effect of new Act.

Sec. 3.

bribery avoiding the election, when done by an agent, but the mere fact of employing and paying, for *bond fide* work in connection with the election, persons, whether electors or not, in excess of the number permitted under Schedule 1, is of itself an illegal practice—if done by the candidate or his election agent, sufficient to upset the election, and if done by other agents, is an illegal hiring, &c., which subjects both parties, on summary conviction, to loss of vote (s. 36) and a fine not exceeding £100 (ss. 17 & 21).

And this is equally the case even where it is done without any corrupt intention of influencing votes, unless indeed the High Court or Election Court think fit, under all the circumstances of the case, to allow it as an exception under s. 23 of the new Act.

Moreover, if the persons are electors, and have been so employed within six months of the election, they are guilty of a misdemeanour, in case they should vote, under the R. P. Act, 1867, s. 11.

Other forms of
bribery.

Similarly, with reference to other forms of bribery of this nature, as to which a question always arose under the old law, whether the employment or hiring was *bond fide*, or in excess of the requirements of the case, or whether the payment given was excessive, and so on, whether it be the hiring of cabs (as at *Carrickfergus*, 3 O. & H. 91), or lavish expenditure in advertising (as at *Westminster*, 1 O. & H. 90), or the wholesale hiring of public-houses for unnecessary committee rooms (as at *Sandwich*, 3 O. & H. 158), the new law refuses to countenance anything of the sort. The number of committee rooms is strictly limited (Sched. 1), and in no case may they be taken

in public-houses, or any places where refreshments of any kind are ordinarily sold (ss. 7 & 20). Payments to electors for placarding, &c., are forbidden, except within the limits actually necessary for the occasion, and the job may only be given to an elector who is an advertising agent by trade, in the ordinary way of his business (s. 7, and Sched. 1). Lastly, all travelling expenses are forbidden (s. 7), with the single exception of voters who have to cross the sea, or an arm of it, in order to reach their polling place (s. 48); so that it is no longer necessary to discuss the vexed question, when the payment of travelling expenses is permissible and when not, and whether the terms in which they are offered to be paid constitutes a conditional promise or otherwise. (*See Cooper v. Slade*, 6 H. L. C. 747; *Bolton*, 2 O. & H. 138.)

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“*To or for any person on behalf of any voter, or to or for any other person to induce any voter.*”—It must be shown that the voter has actually been influenced by such indirect means; for, while payments, &c., to voters themselves almost necessarily imply corruption, the same presumption is not always raised by payments to third persons (*Ashburton*, W. & B. 2; *Olare ib.* 139), unless, indeed, they are so closely related to the voter (as wife or child living with him) that it is practically the same as if the payment had been made to the elector himself. In such a case, the payment being regarded as given to the voter himself, the same principles will hold good as have been already discussed (*cp. Southampton*, 1 O. & H. 223).

Payment to
third persons.

As in respect of treating, it was said that the

Sec. 3. treating of non-electors, including women, would avoid an election (*supra*, p. 39; *cp. Tamworth*, 1 O. & H. 86; *Poole*, 31 L. T. 17), so, and *à fortiori*, in the case of bribery, will the same result ensue. Moreover, it is to be remarked that the prohibition in the new Act is against the employment of any *persons* in excess of the legal number, which includes women and children as well as men (s. 17).

In the *Bradford* case (1 O. & H. 32), where it was proved that a number of persons known to have influence with the numerous Irish voters were paid on behalf of the respondent to use their influence with them, Martin, B., held that it came within the very words of the statute.

It should also be observed that a distinction is drawn between paying money (either to the voter himself or to another person for him) to *enable* him to vote and paying it in order to induce him to vote. The former, *if unexplained*, is bribery (*Londonderry*, 1 O. & H. 275; *Beverley*, *ib.* 145); the latter is always so (*see* further note on payment of rates, *supra*, p. 77).

Corruptly.

“*Or shall CORRUPTLY do any such act as afore-said, on account of such voter having voted or refrained from voting at any election.*” The first part of the section says nothing about *corruptly*. “It is simply the giving of money to induce a voter to vote that is declared to be an offence. The law fixes upon the act of giving money to a man to vote; every man must know that it is an unlawful and wrong thing to give it, and every man who receives it must know—at least if he be a man in a certain condition of life—that he is doing a dishonest act in being bribed. . . . That

this is the meaning of the Act is shown, beyond all doubt, by the next two lines, which say, &c. The section draws a distinction between them, and it says that if you give money to a man to vote *before* an election, that is *ipso facto* bribery; but if the money is given *after* a man has voted, you must show that it was done *corruptly*. What is the meaning of *corruptly*? I am satisfied that it means a thing done with an evil mind and intention . . . an act done by a man knowing that he is doing what is wrong" (*pr. Martin, B., Bradford, 1 O. & H. 36*).

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Evidence of such corrupt animus.—In the case of a bribe *preceding* the election, the act itself, if proved, is conclusive; but where the act is *subsequent* to the election, whatever the form it assumes (whether the mere payment of money, or the gift, offer or promise of loans, or office or occupation, and the like), it is necessary to show that it was not only *on account of* the vote, but also that *the intention was corrupt*. If, for instance, there had been a previous unlawful promise conditional on the voter voting, or if there had been a previous understanding to that effect, or a corrupt bargain for the future, that would be evidence of corrupt intent. If a mere money payment, without any real or sufficient consideration, be proved, this would, unless rebutted, raise a presumption of a previous promise. "The payment of money as a reward for having voted is corrupt in itself; it tends to destroy the independence of the voter, and is demoralising in its influence on all parties concerned" (*Harwich, 3 O. & H. 71*). And in the same case the following distinction was drawn between treating and bribery *after* an election:—"In the

Proof of corrupt intention.

Sec. 3.
—

case of treating after an election, the presumption is in favour of its being an innocent act, until rebutted by evidence; but in the case of money paid to an elector after the election, the presumption is to the contrary effect until disproved. Similarly, in the case of *R. v. Thwaites* (1 E. & B. 704, decided under the Municipal Corporation Act, but an authority on this point), Lord Campbell held that the giving and receiving of refreshment tickets *after* the election (the voter having previously received money for the same) “is evidence from which an agreement may be inferred. We cannot assume that there was no previous agreement.”

Where the bribery has assumed the form of offers, or promises, or procurement of situations or other employment, the fact of its being a mere sinecure would be held evidence of corrupt intention; or if fair work was given for fair pay, the question of intention will depend on the time at which, or manner in which, the transaction took place, as, if it occurred at the time of the canvass, &c. Thus, such a promise made to a voter after he had promised his vote, but before he had actually given it, was held to be corrupt, as being made to secure the fulfilment of his promise by the voter (*Chatham*, 2 P. R. & D. 85), *i.e.*, “to induce him to vote.”

As to employment which is temporary only, and relates simply to work connected with the election, *see* above, p. 83.

In the case of a *loan* after the election, unless it is on the face of it merely colourable, the same rule as to the necessity of proving a previous promise, agreement, or understanding will hold.

“ Every person who shall directly or indirectly, by
 “ himself or by any other person on his behalf make
 “ any such gift, loan, offer, promise, procurement,
 “ or agreement as aforesaid to or for any person, in
 “ order to induce such person to procure or endeavour
 “ to procure the return of any person to serve in
 “ Parliament, or the vote of any voter at any elec-
 “ tion ; *and*

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C. P. Act, 1854,
 s. 2, sub-secs.
 3 & 4.
 Agreements to
 procure return.

“ Every person who shall, upon or in consequence
 “ of any such gift, loan, offer, promise, procurement
 “ or agreement, procure, promise, or endeavour to
 “ procure the return of any person to serve in Par-
 “ liament, or the vote of any voter at any election ”
 [shall be guilty of bribery, and be punishable
 accordingly].

The third and fourth sub-sections are directed
 against the practice of such wholesale bribery as
 amounts to the purchase of the seat, and against
 corrupt agreements to procure the return of a
 candidate, entered into with any person whose local
 influence enables him to command the seat. These
 provisions replace those of the repealed Stat. 49
 Geo. III. c. 118. But they do not (as did that act)
 disqualify a candidate for knowing of and consenting
 to such corrupt agreement. This would, however,
 be covered by s. 4 of the Act of 1883, which renders
 a candidate liable for “any corrupt practice other
 than treating or undue influence, proved to have been
 committed with his knowledge and consent.”

The effect and scope of these sub-sections were
 thus explained by Willes, J., in the *Coventry Case*
 (1 O. & H. 97). “The payment to be made under
 the 3rd section must be a payment for the purchase

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of influence, a payment to some person who has influence in a place in order to purchase that influence. . . . It is not an offence within the 3rd clause for a candidate to bring forward another person to stand as his colleague. You must show an intention to do that which is against the law, before you bring the case within any of those highly penal clauses of the 17 & 18 Vic. c. 102. Therefore, to bring forward another candidate under such circumstances, without a view to purchase his influence, with the intention of serving a man's party, and because he does not mind spending his money upon the legitimate expenses of himself and of the other candidate, with the view only to serve his party, and not with the view to purchase influence for himself, does not fall within that 3rd clause. But it would be bribery in the case of the person who gave, as well as in the case of the person who received the benefit, and if the respondent E. agreed to give the respondent H. £5—I may say a farthing in point of law—if he agreed to give him anything, if only a peppercorn, for the purpose of purchasing any influence which the respondent H. had with the electors of Coventry, and of advancing the respondent E.'s interest, as a candidate at the election."

It will thus be seen that under these sub-sections, two classes of agreement may come into question, one of which is, and the other is not, illegal.

Corrupt
Agreements.

1. *Illegal Agreements.*—In the *Harwich* case* (2 P. R. & D. 230) the committee avoided the election because the sitting member had entered into

* Decided under 40 Geo. III. c. 118, the provisions of which, being repealed, are replaced by these sub-sections.

an engagement with J. A., through his solicitor, by which he himself was to pay certain sums of money in the event of his return, and J. A. was to endeavour to procure his return.

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—

In the *Barnstaple* (second) case (2 P. R. & D. 341), the election was avoided on the ground that the sitting member “had procured his election and return by means of an illegal bargain and agreement, having promised one of the election agents to pay his bill of costs in connection with a previous election inquiry, within a week after his election.”

In the *Lisburn* case (W. & Br. 226) the committee passed the following resolution:—“That, inasmuch as money was given to the witness in order to induce him to personate his father (himself not being a voter), the committee is of opinion that this constitutes such a corrupt intention as to bring the case within the meaning of the 3rd clause of s. 2 of the 17 & 18 Vic. c. 102.” Such a case would, however, now fall within s. 6 (2) of the new Act, dealing with aiding, abetting, or procuring personation.

In *Britt v. Robinson* (L. R. 5 C. P. 503) it was held, that “the acts done by the sitting member’s agent in bribing and treating people, for the purpose of inducing them to vote for him at the test ballot, although assumed to be without any view of securing the same votes when the election came on, are illegal both at common law and within the provisions of s.-s. 3 of s. 2 of the Corrupt Practices Act, 1854, and Bovill, C. J., said: “The last words of the clause distinctly show that it is bribery to endeavour by gifts to procure the vote of a voter.”

In the *Youghal* case (1 O. & H. 294), on the other

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hand, where large sums were proved to have been distributed in shillings and half-crowns to poor people (who were not voters) in the streets of the town, it was held not to be bribery under this subsection.

What
agreements
are legal.

2. *Legal Agreements*.—On the other hand, an agreement between two candidates standing together, that the one should pay the expenses of the other is, as the *Coventry* case (*ubi. sup.*) shows, in the absence of any corrupt intention, perfectly proper.

Similarly, “a subscription instituted for the purpose of paying the expenses of a candidate is not in any way an illegal or unconstitutional proceeding.” But “it would behove a candidate to look well, that the money of which he availed himself of his own knowledge is legitimately applied, because he incurs a responsibility the moment he holds himself out as a person to be elected by those means” (*Belfast*, 1 O. & H. 285).

So, too, one candidate may subscribe to the election fund of another, standing quite independently of him, without thereby becoming responsible for the corrupt misapplication of the money so subscribed (*ib.*)

“Legal expenses *bonâ fide* incurred,” as fees and remuneration paid to legal agents, who are often selected because of their local influence and knowledge, though in one sense paid to a person in order to induce him to procure the return, are of course not bribery within this clause, being protected by the proviso, which *see infra*, p. 96. As to what expenses are legal under the new Act, *see* section:—

C. P. Act, 1854.
s. 2, s.-s. 5.

“Every person who shall advance or pay, or cause

“to be paid, any money to or to the use of any other person, with the intent that such money or any part thereof shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election: Provided always, that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses *bonâ fide* incurred at or concerning any election” [shall be guilty of bribery and punishable accordingly].

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—

The 5th sub-section is directed against those persons, whether candidates or contributors to the expenses of a candidate, who (1) advance or pay or cause to be paid any money to any person with the intent that it should be expended in bribery; or (2) who repay money to any person knowing it to have been expended in bribery, at an election.

Money to be expended in bribery.

To or to the use of any other person, i.e., the money may be paid into a bank (see *Aylesbury*, 2 Peck. 259; *Rye*, 2 P. R. & D. 122) or otherwise on his account.

With the intent that it shall be expended in bribery, i.e., it need not be proved that it was paid to or for a particular person in order that he should bribe. It is sufficient to prove the intention to bribe, whether by that person or by any one else. Similarly, where the money is repaid after the election, it does not matter whether the payee himself or some other person spent it in corruption, provided the person paying it knew that it had been so expended; so that the repayment to a person of a sum of money

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Meaning of "at an election."

At an Election.—It has been questioned whether the clause applied (a) to the case of money lodged *after* an election, to be expended, not "in discharge or repayment" of money already spent in bribery, but in original bribery itself; but whether it does or not, such a case seems to be covered by the last words of sub-sec. 1, "or shall corruptly do any such act, *on account of such voter having voted or refrained from voting;*" (b) to the case of money lodged *previous* to an election, to be so expended *after* the election; (c) to the case of money paid *either before, during or after* the election, to a person, with the intention that it should be expended in paying *after* the election in accordance with prior corrupt agreements, and the repayment of money so expended. The question, it will thus be seen, turns upon whether *at* is to be quite literally taken, or so as to include transactions *after*, but still directly connected with, the election. Upon those points no decisions appear hitherto to have been given, and it may therefore suffice to observe that, in construing remedial statutes, though the judges "are not tied down to the letter of the enactment, effect must not be given to a penal statute (such as is the present) unless the offence charged comes within the very words of it" (*Huntingtower v. Gardiner*, 1 B. & C. 299).

* Rogers, 369; Cunn. 146.

Yet, on the other hand (to quote the words of Coleridge, J., in *Henslow v. Fawcett*, 3 A. & E. 58), “in construing penal statutes, we must not, by refining, defeat the obvious intention of the legislature, or for replacing any money expended in such payments.”

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—

The sub-sections dealing with bribery do not specify any time, whether before or after the election, within which the act of bribery must be committed. “Any act committed previous to an election, with a view to influence a voter at a coming election, whether it is one, two, or three years before, is just as much bribery as if it was committed on the day of the election” (*Sligo*, 1 O. & H. 302; *Stroud*, 2 O. & H. 183). But this statement must, of course, be taken as modified by the rule of evidence, which prohibits generally acts done at former elections for the place being gone into,* and now also by the provisions of s. 49 of the Act of 1883, which precludes inquiry into any election prior to the passing of the Act. And so, bribery committed at a previous municipal election may upset a subsequent Parliamentary election, if a connection between the two is established, as in the *Beverley* case (1 O. & H. 143), where, although little or no bribery took place at the Parliamentary election, the sitting members were unseated on account of the flagrant and notorious bribery which had prevailed during the municipal contest a fortnight previously. But where no such connection is proved, the validity of the election will be upheld (*Hastings*, 1 O. & H.

Time not limited.

* Cp. Cunn. on El. p. 312.

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Bribery at
municipal,
when avoiding
Parliamentary,
election.

217; *Southampton, ib.* 226). In the latter case Willes, J., said: "The elections are *prima facie* distinct; there is no necessary connection between them, and it is not enough to show misconduct with reference to the municipal election, without connecting that election in some way with the Parliamentary election. There have been cases in which it was clear that the municipal and the Parliamentary election were part of one political contest, and that corrupt action at the municipal election either was intended expressly to operate upon Parliamentary elections, or that the necessary result of what was done at the municipal election was to affect the Parliamentary election; where, upon the principle being applied that persons must contemplate the natural consequences of their acts, an intention to affect the Parliamentary election ought to be attributed, both to people who were shown to have miscondacted themselves with reference to the municipal election, and to agents of the members who have been guilty of corrupt practices in the course of the municipal election, but with a view to the effect of such practices upon the Parliamentary election." In such cases the Judges have held that the two elections were, under the circumstances, really parts of one and the same political contest, and that the members in the Parliamentary contests were bound by the acts of their agents in the course of the municipal contest.

Proviso.

The section concludes with a proviso which excepts from the operation of the section "any money paid, or agreed to be paid for, or on account of any legal expenses *bona fide* incurred at or con-

“cerning any election.” As to what constitutes legal expenses under the new Act, *see* ss. 24 *et seqq.* and Schedules.

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In any case, “it ought to be thoroughly understood, that this proviso relates merely to the expenses of the candidate, and not to the expenses of any other person. It does not relate to the expenses of voters; to pay the expenses of voters on condition of their voting or abstaining from voting, is unquestionably bribery” (*pr.* Willes, J., *Coventry*, 1 O. & H. 101).

The third section, dealing with those who accept bribes, contains the following enactments:—

C. P. Act,
1854, s. 3.

“The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly.

“(1.) Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for, any money, gift, loan or valuable consideration, office, place, or employment, for himself, or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at any election.

“(2.) Every person who shall, after an election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or to refrain from voting at any election.”

The prohibitions contained in the first of these clauses correspond to those directed against bribers

Sec. 3.

in the first and second clauses of s. 2. This section is not, however, merely complementary of the preceding one, in the sense that bribery must be proved on both sides in order to be a complete offence. The law makes bribery complete, so far as the briber is concerned, without acceptance of the bribe by the voter, and a corrupt receipt of the bribe is a separate and independent offence (*Malcolm v. Parry*, 9 L. R. C. P. 616). The present section, moreover, differs from the second—*first*, as to the time of the acceptance of the bribe, and, *secondly*, in omitting all mention of the *offering* to be bribed. Such asking for a bribe was in fact constituted an offence by 2 Geo. II. c. 24, but that statute was repealed by the one now under consideration; and as it does not appear to have been merely declaratory of the common law, it seems that such asking for a bribe is not now an offence, either at common law or by statute. And in the *Mallow* case (2 O. & H. 22) Morris, J., refused to make a precedent to this effect.

Offering to be
bribed.

Every voter—not every *person*, as in the second clause.

Before or during an election.—The next clause deals with the case of persons, whether voters or not, receiving “money or valuable consideration” (but not “gifts, loans, offices, or employment”) *after* an election.

Money gift, &c.—See notes on s. 2 above.

The voter will be equally liable under both clauses, whether he deals directly or indirectly (*see* note above, p. 42), and personally or through some third person, with the briber, and whether he accepts

the bribe for his own benefit or for that of somebody else.

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For agreeing to vote.—The mere agreement to vote corruptly will now, irrespective of the subsequent vote, be a complete act of bribery (*Norwich*, 19 L. J. 615). This was not the case at common law, and consequently the minds of lawyers were greatly exercised, whether it was bribery when a voter, having promised to vote for one candidate, voted for another or not at all, and so on (*see Rog.*, p. 370, *note*.) But supposing a man was bribed to vote at an election, but before the election took place both the briber and voter repented, and the voter returned the money, that would not be bribery (*pr. Lord Bramwell, Windsor*, 2 O. & H. 92). And so, where an agent of the petitioner, some time before the election, sent cheques to two of the respondent's supporters, on which was written "retainer," which they, in order not to be incapacitated from voting for the respondent, sent back, Fitzgerald, B., said: "I think the object before the mind of the party, in order to his being bribed, must be either the abstaining from voting or the giving of the vote; and though that was the thing in the mind of the person giving these considerations or retainers, that will not make it an inducement to the other party, unless the same thing was before the mind of that party also" (*Cashel*, 1 O. & H. 289).

The clause includes also those cases where the voter, by means of false pretences, obtains money, &c., from a person who gives it *bonâ fide* (*Cambridge*, W. & D. 42).

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On the other hand, a voter may unintentionally become the recipient of what was intended by the giver to be a bribe, *e.g.*, where a person corruptly gives money to voters for loss of time in the Revising Barrister's Court, which the voters receive honestly and *bond fide*, because they believe they are entitled thereto. "If," said Lord Blackburn (*Taunton*, 1 O. & H. 184), "a voter honestly and *bond fide* comes forward in that way, I do not, as at present advised, think it would be bribery on his part within the meaning of 17 & 18 Vic. c. 102, s. 3 (1). It is a question of fact."

Persons bribed
by corrupt
payment of
rates.

The 49th section of the R. P. Acts, 1867 & 1868, which declares the corrupt payment of rates to be an act of bribery, and also the corresponding enactment as to the Scotch Universities (44 & 45 Vic. c. 40, s. 2), provide that "such person on whose behalf and with whose privity any such payment is made shall also be guilty of bribery, and punishable accordingly."

The Ballot Act, 1872 (s. 25), provides for the striking off of votes, on a scrutiny in cases of bribery, treating, or undue influence (*see, infra*, p. 383).

C. P. Act, 1854,
s. 3, s.-s. 2.

The second clause is to be distinguished from the first in the following particulars:—

- (a) It is directed against "every *person*" who, &c., so that the passive recipient of a bribe, whether a man or woman, and whether possessing a claim to the franchise or not, is equally punishable.
- (b) The clause applies only to what may happen *after* an election; and

- (c) Then only to the receipt of *money or valuable consideration.* Sec. 3.
—

As to the meaning of valuable consideration, *see* notes *supra*, p. 73.

The mere taking of money by one who has voted after an election is evidence from which a jury would be justified in inferring a previous contract (*R. v. Thwaites*, 22 L. J. Q. B. 238; *Harwich*, 3 O. & H. 71, *supra*, p. 88).

This clause goes still further, and makes it bribery merely to receive money or valuable consideration on account of a vote, the omission of the word "corruptly," which is used in the corresponding clauses about bribers, rendering it apparently unnecessary to establish any corrupt previous agreement. But where the bribe has taken the form of a "gift, loan, office, place, or employment," made *after* the election, a previous agreement must be proved, which then brings the offence under the first sub-section, otherwise it is no offence. No corrupt
intention need
be proved.

The bribe may be taken either directly or indirectly by the voter himself, or by any other person on his behalf, but not, as in the clause above, "for any other person." At the same time, the transaction need not necessarily relate to his own vote, but is equally bribery, whether it affects the vote of the offender himself or of any other person. The clause, therefore, affects the following:—

Voters who take a bribe—

- (1.) On account of having themselves voted or not voted.
- (2.) On account of some other person having voted or not.

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- (3.) On account of having induced some other person to vote or refrain from voting.

Non-voters who take a bribe.—

- (1.) On account of some voter having voted or not.
 (2.) On account of having induced any other person to vote or refrain from voting.

II.—PERSONATION.

Personation.

The following definition of personation (contained in s. 24 of the Ballot Act, 1872) is, by s. 3 of the Act of 1883, re-enacted, and declared to be a corrupt practice :—

Ballot Act, 1872,
s. 24.

“A person shall, for all purposes of the laws relating to Parliamentary and Municipal Elections, be deemed to be guilty of the offence of personation, who at an election for a county or borough, or at a Municipal Election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who, having voted once at any such election, applies at the same election for a ballot paper in his own name.”

“The same section enacts that “the provisions of the Registration Act, 1843, 6 Vic. c. 18 (ss. 85-89 both inclusive) shall in England and Ireland respectively apply to personation under this Act in the same manner as they apply to a person who knowingly personates and falsely assumes to vote in the name of another person as mentioned in the said Act.” *

* For the application of the Act to Scotland, see s. 26. It is also expressly provided by s. 31 that the personation clauses “shall apply to any election for a University or combination of Universities.”

“*Applies for a ballot paper.*”—Under the 6 Vic. c. 18, some doubt prevailed as to whether it was not essential for the completeness of the offence of personation, that the voter should *actually* have voted. But the point was really settled by *R. v. Hague* (33 L. J. M. C. 81) where Mellor, J., said: “When a man presents a voting paper to the officer, the personation is complete,” and now all doubt on this head has been set at rest by the provisions of s. 15 of the Ballot Act, which enact that “any person *applying for a ballot paper under this Act* shall be deemed to ‘tender his vote’ or to ‘assume to vote’ within the meaning of the enactments [relating to the representation of the people, and to the registration of electors]; and any application for a ballot paper under this Act, or expressions relative thereto, shall be equivalent to ‘voting’ in the said enactments and any expressions relative thereto.”

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Applying for
ballot paper
constitutes
voting.

The essence of the offence is, that he has “knowingly personated and falsely assumed to vote in the name of some other person, and is not in fact the person in whose name he voted” (6 Vic. c. 18, s. 88. See cases at *Oldham*, 1 O. & H. 152 &c., and *Berwick*, 44 L. T. 290); and this must be proved (*Athlone*, 3 O. & H. 59).

What is
personation.

To personate means to pretend to be a particular person; and as soon as a man by word, act, or sign, holds himself forth as a person entitled to vote, with the object of passing himself off as that person, and exercising the right which that person has, he has personated him; the giving a false answer to any one of the questions put to him makes him guilty of

Sec. 3.

another offence, *viz.*, misdemeanour (*Reg. v. Hague*, 4 B. & S. 720). And this may of course be the case whether he assumes to vote in the name of a person living or dead, or even of a fictitious person, if, owing to the carelessness of the authorities having to make up the register, or otherwise, a fictitious name should happen to find a place thereon. If, moreover, having already once recorded his vote, he attempts to vote a second time in his own name, this also is personation, although not in the literal sense an assuming to vote in the name of another person. The offence in both cases having this common foundation, that a right is claimed which, in the first instance, is actually non-existent, and in the second has already been exhausted.

Detection of personation.

The fact of the personation must be brought to the notice of the returning officer at the time of voting by the candidate's polling agent, it being provided by s. 86 of the Registration Act, that "if at the time any person tenders his vote at such election, or after he has voted, and before he leaves the polling booth, any such agent [as appointed under s. 85] shall declare to the returning officer, or his respective deputy presiding therein, that he verily believes and undertakes to prove that the said person so voting is not in fact the person in whose name he assumes to vote, or to the like effect, [or that he has already voted at the election]* then and in every such case it shall be lawful for the said returning officer,† and he is hereby required

* These words are necessary, as s. 24 of the Ballot Act makes it personation to apply a second time for a ballot paper.

† The words "or his deputy" which followed here have been omitted, as by Rule 60, under the Ballot Act, the presiding officer's clerks may not order "the arrest, exclusion or ejection from the polling station of any person."

immediately after such person shall have voted, by word of mouth, to order any constable or other peace officer to take the said person so voting into his custody, which said order shall be a sufficient warrant and authority to the said constable or peace officer for so doing."

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—

And for this purpose the sheriffs and returning officers are (by s. 90) empowered to provide a sufficient attendance of constables or peace officers in each booth; but s. 8 of the C. P. Act, 1854, provides that "no person having a right to vote at the election shall be liable or compellable to serve as a special constable at or during any election . . . unless he shall consent so to act; and he shall not be liable to any fine, penalty or punishment whatever for refusing so to act."

As to the subsequent proceedings, after the arrest of the alleged personator, *see* ss. 87-89 of the Registration Act, in Appendix, p. 330.

As, by virtue of s. 15 of the Ballot Act, the mere applying for a ballot paper may be an act of personation, it would appear that the returning officer may order the arrest of a voter, even before he has actually voted, *e.g.*, in case of the voter applying a second time for a voting paper; or it might happen that two voters were so much alike as to cause the personation agents to believe that one of them had already voted; or two voters may have the same name (*Oldham*, 1 O. & H. 152). In such a case, the word "*immediately after such person shall have voted*," in the above section, must be taken to have been impliedly repealed. But it may of course happen that the voter insists on his right to vote,

Application for
a ballot paper
may be
personation.

Sec. 3.

—

and the returning officer or his respective deputy (*see* Ballot Act, 1872, s. 10) shall, in that case, if required on behalf of any candidate, put to the voter, at the time of his tendering his vote, and not afterwards, the following questions or either of them (s. 81 of 6 Vic. c. 18):—

Questions
allowed to be
put to voter.

1. Are you the same person whose name appears as A. B. on the register of voters now in force for the County of
(*or as the case may be*);
2. Have you already voted, either here or elsewhere at this election, for the County of
(*or as the case may be*).

And he shall also, if required on behalf of any candidate at the time aforesaid, administer an oath to the same effect.*

This question is merely to ascertain whether the voter is the person whose name appears, however incorrectly, as A.B. on the register. Thus, in *R. v. Thwaites* (22 L. J. Q. B. 240), it was ruled that, if persons are entitled to vote, and they have answered and answered truly that they are the persons mentioned in the burgess roll, it matters not that they have voted in wrong names, it is a case of misnomer within s. 142 of Municipal Corporation Act; and “Where a voter has been entered by mistake on the register as W. B., his real name being T. B., and he votes as T. B., this is misnomer, not personation, and the vote is not vitiated if he is the man who was intended to be described” (*Oldham*, 1 O. & H. 152).

* These provisions were extended to Ireland by 13 & 14 Vic. c. 69, ss. 88, 89, and to Scotland by 43 Vic. c. 18.

And upon an affirmative answer being given, the voter shall be allowed to vote (even if already under arrest) by virtue of the following proviso of 6 Vic. c. 18, s. 86:—

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—

“Provided always, that nothing herein contained shall be construed or taken to authorise any returning officer, or his deputy, to reject the vote of any person who shall answer in the affirmative the questions authorised by this Act to be put to him at the time of polling and shall take the oath or make the affirmation authorised and required of him; but the said returning officer, or his deputy, shall cause the words ‘protested against for personation,’ to be placed against the vote of the person so charged with personation when entered in the poll-book.”

Voter to be
allowed to vote.
6 Vic. c. 18.

The returning officer, by refusing to admit the vote, may subject himself to a criminal prosecution for breach of public duty (*Pryce v. Belcher*, 4 C. B. 866).

Under s. 82 of the 6 Vic. c. 18, no other oath or affirmation shall be required, nor shall a vote tendered by a registered voter be rejected, except by reason of its appearing to the returning officer, or his deputy, upon putting the above questions, or either of them, that the person so claiming to vote is not the same person whose name appears on the register, or that he had previously voted at the same election, or except by reason of his refusing to answer the said questions, or to take the said oath or make the said affirmations; and no scrutiny shall hereafter be allowed by or before any returning officer with regard to any vote given or tendered at any

A scrutiny
when allowed.

Sec. 3.
—

such election. So that “unless the vote of a personator is objected to, there is no machinery provided for enabling us to examine upon which side the vote was given in order to strike it off” (*pr.* Lord Blackburn, *Gloucester*, 2 O. & H. 64). After such objection has been taken, if the seat is challenged on petition, a scrutiny may be ordered by an Election Court under Rules 40 and 41 of the Ballot Act.

The answers to the above questions must be positive and unequivocal (*Monmouth*, Kn. & O. 323, 327);* nor, even if the returning officer know the answers to be untrue, can he reject the vote. But in such a case, and also, it appears, even when the vote has not been challenged, it shall be his duty to “institute a prosecution against any person whom he may believe to have been guilty of personation, or of aiding, abetting, counselling or procuring the commission of the offence of personation by any person at the election for which he is returning officer” (35 & 36 Vic. c. 33, s. 24).

Moreover, “If any person shall wilfully make a false answer to either of the above questions, he shall be deemed guilty of a misdemeanour, and shall and may be indicted and punished accordingly” (6 Vic. c. 18, s. 81).

There is another case of personation of a somewhat different kind, which is provided for by Rule 27 of the first schedule to the Ballot Act, 1872. Under that Rule, “if a person, representing himself to be a particular elector named on the register,

Personating
voter who has
voted.

* There seems nothing in the Act to prevent a voter who has refused to answer these questions at one hour of the day, from returning and doing so later on before the close of the poll, in which case the returning officer would, it is submitted, be bound to allow him to vote.

applies for a ballot paper after another person has voted as such elector, the applicant shall, upon duly answering the questions and taking the oath permitted by law to be asked," be entitled to mark a ballot paper of a different colour, which, instead of being put into the ballot box, is to be given to the returning officer, and set aside by him in a separate packet called the "tendered votes list," and upon a scrutiny (Rules 40 and 41), the vote of the personating party will be struck off and the vote of the person tendering added (*Oldham*, 1 O. & H. 152, 153). Secs. 3, 4.

The aiding, abetting, counselling or procuring of personation is equivalent to personation itself; and if an agent gets voters personated, that, if established, is sufficient ground at common law to set aside the election (*pr. Willes, J., Coventry*, 1 O. & H. 105).

4. Where upon the trial of an election petition (a) respecting an election for a county or borough (b) the Election Court (c), by the report made to the Speaker (d) in pursuance of s. 11 of the Parliamentary Elections Act, 1868, reports that any corrupt practice other than treating or undue influence has been proved to have been committed in reference to such election by or with the knowledge and consent of any candidate at such election, (e) or that the offence of treating or undue influence has been proved to have been committed in reference to such election by any candidate at such election, that candidate shall not be capable of ever being elected to or sitting in the House of Commons for the said county or borough, and if he has been elected, his election shall be void; and he shall further be subject to the same incapacities (f) as if at the date of the said report (g) he had been convicted on an indictment of a corrupt practice.

Punishment of candidate found, on election petition, guilty personally of corrupt practices. 31 & 32 Vic. c. 125.

Under this section a candidate who is reported by the Election Court (1) to have committed bribery or

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personation in reference to an election, or who has been cognisant of and has consented to those offences when committed by another; and (2) to have himself practised treating or undue influence, can never be re-elected, or sit again, for the same constituency; if elected, his election is void, and he is also liable to the incapacities, and, if convicted of being personally guilty of corrupt practices, to the penalties imposed by s. 6; and further, if he is a justice of the peace, barrister, or other professional or licensed person, he will be subject to the operation of s. 38 (6-9).

(a) "*Election Petition*," i.e., presented under the P. E. Act, 1868, as amended by this Act (s. 64 and 40).

(b) "*County or Borough*."—The definitions of these terms contained in s. 38 of the C. P. Act (Appendix, p. 342), are unrepealed, as also are those contained in the P. E. Act, 1868 (Appendix, p. 350), which are substantially the same. In either case the term "borough" is defined to include universities and cities.

It may be remarked that nothing in the "Parliamentary Elections (Returning Officers) Act, 1875," applies to an election for any university or combination of universities (38 & 39 Vic. c. 84, s. 8).

(c) "*Election Court*" means the Judges presiding at the trial of an election petition, or if the matter comes before the High Court, that Court (s. 64). By the 42 & 43 Vic. c. 75, the trial of an election petition must now be conducted before two Judges instead of one. (See notes to s. 64, *infra*, p. 287.)

(d) "*Report to the Speaker*," &c. — See s. 11,

which recites and extends to illegal practices, s. 11 (14) of the P. E. Act, 1868. Sec. 4.

(e) "*Any candidate at such election.*"—The definition of "candidate at an election" contained in the former Acts is repealed and a new definition substituted by the present Act (*see* s. 63). "*Any candidate*" will include the unsuccessful no less than the successful one.

As to the effect of an agent committing these offences, *see* next section.

(f) "*The same incapacities.*"—*See* s. 6, (3) & (4). Term of incapacity under s. 4.

(g) "*As if at the date of the Report,*" &c., *i.e.*, for seven years from the date of the Report, he will be incapable (a) of being registered as an elector or voting at any election, Parliamentary or otherwise, in the United Kingdom, (b) of holding any public judicial office, (c) of being elected to or sitting in Parliament, and any seat or office he may hold becomes at once vacant.

The term of *seven* years will disqualify the candidate from standing at the next following election, inasmuch the existing Parliament, even if it lived for its full term of seven years (which, however, is never the case), would be at an end before the term of incapacity expired.

It is to be observed that the incapacity is to commence from the date of the *report*, not the *election*. But s. 38 (5) provides that "*every* person reported guilty of *any* corrupt or illegal practice, shall . . . be subject to the same incapacity as he would be subject to if he had, *at the date of such election*, been convicted of the offence of which he is reported to have been guilty." As the words "*such election*" And under s. 38 (5).

Secs. 4, 5. were substituted in committee at the last moment for the words "the report," it is possible that the discrepancy which the change has caused between the two sections, so far as the candidate was concerned, was overlooked. And it will therefore be a rather nice question for the Judges to determine, whether *election* shall be read instead of *report* in s. 4 (last line), or whether "every person" in s. 38 (5) shall be held *not* to include *candidates*. But upon the recognised principle that the "later of two passages in a statute, being the expression of the later intention, should prevail over the earlier,"* the latter interpretation, it is submitted, would be the more correct.

Punishment of candidate found, on election petition, guilty by agents of corrupt practices.

5. Upon the trial of an election petition respecting an election for a county or borough, in which a charge is made of any corrupt practice (a) having been committed in reference to such election, the election court shall report in writing to the Speaker whether any of the candidates at such election has been guilty by his agents (b) of any corrupt practice in reference to such election; and if the report is that any candidate at such election has been guilty by his agents of any corrupt practice in reference to such election, that candidate shall not be capable of being elected to or sitting in the House of Commons for such county or borough for seven years after the date of the report, and if he has been elected his election shall be void.

The previous section dealt with candidates *personally* guilty of corrupt practices. This section relates to those who are found guilty *by their agents* of those offences, and enacts that upon the Judges reporting that a candidate has been thus guilty, he shall not be capable of sitting for that county or borough for seven years after the date of the report, and if elected his election shall be void.

* *Maxwell on Interp. of Stat.*, p. 188.

(a) “*Any corrupt practice.*”—It is therefore sufficient to allege in the petition a single case of either of the offences defined as corrupt practices. A check, however, is placed upon harassing petitions being presented upon merely trivial and insufficient grounds by the equitable clause (s. 22), exonerating candidates, in certain cases, from charges of treating, undue influence, and illegal practices. And moreover, if a petition is withdrawn, the petitioner is liable to pay the costs of the respondent (P. E. Act, 1868, s. 35).

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(b) “*By his agents.*”—The election law as to agents is much wider than the ordinary law of agency (*Wakefield*, 2 O. & H. 102; *Hereford*, 21 L. T. 119; *Boston*, 2 O. & H. 167), and has been described as “a stringent, harsh and hard law; it makes a man responsible who has directly forbidden a thing to be done, when that thing is done by a subordinate agent. It is, in point of fact, making the relation between a candidate and his agent the relation of master and servant and not the relation of principal and agent” (*pr. Martin, B., Westminster*, 1 O. & H. 95; *cp. Barnstaple*, 2 O. & H. 105; *Plymouth*, 3 O. & H. 107; and *Norwich*, 1 O. & H. 11). The reason for such stringency is thus stated by Lord Blackburn (*Staleybridge*, 1 O. & H. 66): “Candidates put forward agents to act for them, and it cannot be permitted that these agents should play foul and the members should have all the benefit of their foul play without being responsible for it.” This extreme severity is relaxed by the 22nd section of the Act of 1883, in the cases of treating, undue influence, and illegal practice, when the circumstances show

Stringency of election law as to agents.

Relaxed by Act, 1883, s. 22.

Sec. 5.

that the candidate and his election agent had done their best to prevent any such practices. But in reference to the graver forms of corruption, viz., bribery and personation, the principles of the law as laid down by Election Committees and confirmed by the Judges, will still apply to their full extent.

What constitutes agency.

The general principle has been thus laid down by Lord Blackburn (*Taunton*, 1 O. & H. 182): "In Parliamentary election law it has long been established that where a person has employed an agent for the purpose of procuring his election, he, the candidate, is responsible for the act of that agent in committing corruption, though he himself not only did not intend it or authorise it, but even *bonâ fide* did his best to hinder it." (See also *Lichfield*, 1 O. & H. 26; *Hastings*, 21 L. T. 235; *Blackburn*, 1 O. & H. 202).

A bribe by anybody will, if proved, defeat a vote; a bribe by a candidate or agent will defeat an election (*Willes, J., Windsor*, 1 O. & H. 2; and by the common law a single bribe in the latter case would suffice to upset the election (*Westbury*, 1 O. & H. 52). But the evidence of agency must then be quite clear (*Hastings, ib.* 219).

The moment an act of bribery was committed by himself, or a person for whom he was responsible, from that moment his status as a candidate was annihilated (*pr. Martin, B., Norwich*, 19 L. T. 618).

Sub-agents.

The same rule applies to sub-agents: "It is clear law, that if an agent of the candidate employs a sub-agent to negotiate with a voter for going to the poll, and the sub-agent commits an act of bribery in carrying out his commission, the candi-

date is as responsible as if the act had been done by the agent himself" (*Plymouth*, 3 O. & H. 107; *Barnstaple*, 2 O. & H. 105; *Norwich*, *ib.* 41; *Westminster*, 1 *ib.* 95).

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For the "candidate is responsible, generally, you may say, for the deeds of those who, to his knowledge, for the purpose of promoting his election, canvass and do such other acts as may tend to promote his election, provided that the candidate or his authorised agent have reasonable knowledge that these persons are so acting with that object" (*Wakefield*, 2 O. & H. 102).

As to what constitutes agency, where an express appointment is proved, whether written or verbal, no difficulty arises; and in respect of the candidate's election agent and sub-agents, when he does not name himself as his own agent (s. 24 (2)), the less uncertainty can arise, because he is required, before the election, to give their names and addresses in writing to the returning officer, who is forthwith to publish them. (Ss. 24 (3), 25 (3)). The sub-agent, *as regards matters in a polling district*, has all the powers and liabilities of the election agent himself (s. 25 (2)). But in many cases the agency can only be inferred, and then it is rather a question of fact than of distinct rules (*Evesham*, 3 O. & H. 193). "It has never yet been distinctly and precisely defined what degree of evidence is required to establish such a relation between the sitting member and the person guilty of corruption as should constitute agency. No one has yet been able to go further than to say, as to some cases, enough has been established, as to others, enough has not been established, to

Where no express authority, agency is a question of fact.

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vacate the seat" (*pr.* Lord Blackburn, *Bridgwater*, 1 O. & H. 115). It has, however, been laid down by the same learned Judge, that "every instance in which it is shown that either with the knowledge of the member or the candidate himself, or to the knowledge of his agents who had employment from him, a person acts at all in furthering the election for him, in trying to get votes for him, is evidence tending to show that the person so acting was authorised to act as his agent. It is unnecessary to prove any payment" (*Bewdley*, 1 O. & H. 17; *cp.* *Westbury*, *ib.* 55; *Stroud*, 3 O. & H. 11; *Harwich*, *ib.* 69; *Dungannon*, *ib.* 101).

Under Act of
1883.

Under the Act of 1883 (Sched. I.), a candidate may employ a limited number of *paid* clerks and messengers, in addition to his election agent, sub-agents and polling agents, and these are the only persons whom he may employ for payment. But he may, as before, employ as many volunteers or unpaid agents as he pleases, and it is with respect to such persons that the questions as to agency will chiefly arise.

Agency of
Clergy.

Where the respondent had written a letter to a priest, urging a conference of the clergy for the organisation of public meetings, it was held that he thereby "made every bishop and priest, from the highest to the lowest, who acted at such meetings, his agents" (*Galway*, 2 O. & H. 53; *cp.* *Dublin*, 1 O. & H. 272; *Limerick*, *ib.* 260).

Agency to
canvass
particular class.

And there is this distinction between the acts of a man appointed (or accepted) as agent to canvass generally, and one whose business it was to canvass a particular class (as *e.g.*, if a master were asked to

canvass his workmen), that, in the former case, bribery would avoid the election, while in the latter the candidate would not be responsible (*Harwich*, 3 O. & H. 69; *Westbury*, *ib.* 79; *Hereford*, 21 L. T. 120; *Wigan*, 4 O. & H. 12).

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But where he was limited only to a particular district, the candidate was held responsible (*Durham*, 2 O. & H. 136).

The law could not be better or more concisely stated than in the following judgment of the late L. J. Lush (*Harwich*, 3 O. & H. 69): "The difficulty always is, when there is no express appointment, to determine whether the wrongdoer did or did not stand in the relation of agent to the candidate in respect of the particular matter of the complaint. An agent is a person employed by another to act for him and on his behalf, either generally or in some particular transaction. The authority may be actual, or it may be implied from circumstances. It is not necessary, in order to prove agency, to show that the person was actually appointed by the candidate. If a person not appointed were to assume to act in any department of service as election agent, and the candidate accepted his services as such, he would thereby ratify the agency. So that a man may become the agent of another in either of two ways—by actual employment, or by recognition and acceptance. The next question is, if agent, what is he agent for, what is he appointed to do, or what does he profess to do? If a person were appointed or accepted as agent for canvassing generally, and he were to bribe or treat any voter, the candidate

Judgment of
Lush, L. J., in
Harwich case.

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would lose his seat. But if he were employed or accepted to canvass a particular class—as if a master were asked to canvass his workmen, and he went out of his way and bribed a person who was not his workman, the candidate would not be responsible, because this was not within the scope of his authority. And for the same reason, if a person whom the candidate had not in any way authorised to canvass at all for him, were to take upon himself to bribe a voter, the candidate would not be responsible for that wrongful act. No candidate could ever secure a seat, if he were made answerable for the acts of unauthorised persons.”

Westbury case.

And so in the earlier *Westbury* case (1 O. & H. 48), Willes, J., said, in reference to a manufacturer who had been asked for his vote and interest, and had canvassed his workmen and dismissed some who refused to vote as he wished:—“Asking a person in his position for his ‘vote and interest’ might mean ‘go round and canvass your workmen for me,’ though that might not be the case with ordinary voters. But if it did mean that, it would not be an authority to canvass beyond the scope of the workmen in his employ. With respect to anything done as to voters other than these workmen, it might very well be said there was no agency, but within the scope of the authority to act as agent there was quite as strong a responsibility on the part of the candidate as there would be in the case of a general authority to canvass.” Similarly, a landowner, who, though he refused to be on the committee, promised to “answer for his own tenants,” was held to be an agent (*N. Norfolk*, 1 O. & H. 237).

"Authority to canvass constitutes an agent, and authority for the general management of an election involves authority to canvass" (*Windsor*, 1 O. & H. 2; *Lichfield*, 1 O. & H. 25), "and it does not signify whether he has been forbidden to bribe or not" (*Norwich*, 1 O. & H. 10). The relation is more on the principle of master and servant than of principal and agent (*ib.*).

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What is, and what is not sufficient to constitute agency.

But the bare act of accompanying a candidate in his personal canvass is not conclusive evidence of agency (*Salisbury*, 3 O. & H. 132; *Shrewsbury*, 2 O. & H. 36; 2nd *Salisbury*, 4 O. & H. 21).

Nor does the mere possession by a canvasser of a canvassing-book prove him to be an agent; it must be shown from whom he obtained the book (*Bolton*, 2 O. & H. 140; *cp. Salisbury*, 4 O. & H. 21).

But when a man not only had such a book, but was canvassing with the respondent himself, and was going in and out of the committee-room and also took persons to the poll, agency was held to be established (*Tewkesbury*, 3 O. & H. 98).

And so, any such acts as the paying of election bills, bringing of voters to the poll, giving of directions as to the conduct of the election, and making appointments for voters to see the candidate, together with canvassing for or in company with the candidate, have on various occasions been held to be sufficient evidence of agency (*Norwich*, P. & K. 570; *Ipswich*, K. & O. 345; *Horsham*, 1 P. R. & D. 253; *Huddersfield*, 2 *ib.* 128; *Liverpool*, *ib.* 250; *Bewdley*, 19 L. T. 676; *Hereford*, 1 O. & H. 194; *Bodmin*,

* Acts held sufficient to establish agency.

* Under s. 28 of the new Act no such payments are now allowed except through the properly appointed election agent.

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ib. 119; *Durham*, 2 *ib.* 136). But where volunteers put themselves forward officiously to canvass, they do not necessarily become agents even, *semble*, if the candidate does not interfere to prevent them (*Taunton*, 1 O. & H. 181); and, *à fortiori*, when he attempts to get rid of such uninvited supporters (*Londonderry*, 1 O. & H. 278); but, of course, the acceptance by a candidate of the services of a volunteer makes the latter his agent (*Staleybridge*, 20 L. T. 75; and *Harwich*, 3 O. & H. 69), as does also his subsequent adoption or ratification of their acts (*Hereford*, 1 O. & H. 194; *Westbury*, 3 *ib.* 79), unless it be proved that at the time he did so he was unaware of their illegality (*Tamworth*, 1 O. & H. 75, at p. 81). But there are, besides, "many persons who are employed at an election, and who, in one sense, are agents of the candidate, but who are not agents in the sense that the election would be considered void by their misconduct (*pr.* Willes, J., *Bodmin*, 1 O. & H. 120).

Messengers not agents.

And so mere messengers have been held not to be agents (*Windsor*, 1 O. & H. 3; *Staleybridge*, *ib.* 72; *Bodmin*, *ib.* 120; *Durham*, 2 *ib.* 137); but this must be in the case of their not receiving any payment, otherwise they come within the class of paid agents under the Act of 1883.

Agency of partners and others.

The agency of one member of a firm is no proof of the agency of his partner (*Mallow*, 2 O. & H. 21; *Norwich*, P. & K. 565). Nor is the son of an agent necessarily an agent too, although he may have been active in the election (*Westminster*, 1 O. & H. 96). "I cannot hold that an act done by the son, because his father was a person for whom the respondent would be responsible, would make young

H. one also" (Martin, J., *Westminster, ib.*). But bribery by the wife of an agent has been held to bind the respondent, in the following case:

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"I see no way by which a respondent can escape the consequences of an act of bribery by his agent. It was said that it would make a difference that the wife was the agent of T. I cannot see that. In doing that which is the act of an agent, an agent may use the instrumentality of another" (Fitzgerald, J., *Cashel*, 1 O. & H. 288).

And if an agent delegates his authority to another, the candidate will be liable for the acts of both (*Staley-bridge*, 1 O. & H. 69; *Bewdley*, 1 *ib.* 18; *Stafford*, *ib.* 228; *Cashel*, *ib.* 286; *Barnstaple*, 2 *ib.* 105; *Plymouth*, 3 O. & H. 108). So, too, the salaried clerk of a solicitor authorised to act as agent, will by his acts affect the candidate (*Bewdley*, 19 L. T. 676). But a candidate is, of course, not responsible for acts done by an agent with a view to betray him, though it is otherwise, if his agent be tricked into committing a corrupt act by the opposite party (*Stafford*, 1 O. & H. 230).

Agency of delegate.

A confidential servant of the candidate was held not to be an agent (*Cockermouth*, 2 P. R. & D. 170), although he took an active part in the election. And where a gentleman, having canvassed a borough, withdrew in favour of his brother, who practically adopted the preparations already made for the contest, it was decided that no agency existed between them (*E. Retford*, 1 P. 479; *Ipswich*, W. & D. 178).

Nor, as a rule, is agency at a former election allowed to be evidence of agency at a subsequent one (*Ashburton*, W. & B. 3; *Penryn*, K. & O. 443),

Agency at former election.

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although evidence in this respect has sometimes been permitted (*Waterford*, 2 O. & H. 2; *Sligo*, 1853, printed minutes).

Agency of committees.

Committees.—Lord Kenyon held in *Ridler v. Moore* (Clif. 371), that a committee, in whose hands a candidate places the management of the election, are individually, as well as collectively, his agents (*cp. Huddersfield*, 2 P. R. & D. 128). Similarly, Grove, J., in the *Wakefield* case (2 O. & H. 102), where the sitting member was vice-president of a society in the rooms of which the business of the election was carried on (*cp. Dublin*, 1 O. & H. 272, as to district committees). But such a committee, to bind the candidate, must be kept within certain limits, *e.g.*, “a number of persons, comparatively few (of course in a county it would be larger), who were entrusted by the candidate with the work of carrying out his election, in whom he put faith and trust, and who, in fact, were his agents, for that purpose” (*pr. Martin, B., Westminster*, 1 O & H. 92). “I have never supposed (said the same learned Judge, *ib.*), that where a number of people (600 or 700) choose to call themselves a committee, thereupon they become agents of the candidate for the purpose of making him responsible for an illegal act done by one of them.” The mere fact of a man being shown to be a member of such a committee is insufficient to establish agency, unless it be proved who put him upon it, or how he got there, what his duties were, or what he did (*Windsor* 2 O. & H. 8, 9). “If I see a person’s name on the committee from the beginning, if I find that he attended meetings of the committee, that he canvassed and his canvass was recognised

so far as it went, I shall require considerable argument to convince me he is not an agent" (*pr. Willes, J., Westbury, 20 L. T. 24*). And the same with respect to members of self-appointed committees (*Staleybridge, 1 O. & H. 67*). But persons who do what committee men usually do, are just as much committee men as if they were expressly called so (*Lichfield, 1 O. & H. 25*).

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Political Associations and Clubs.—In the same way, the members of political clubs and associations though they constitute themselves committees for conducting an election, do not necessarily become agents, even when the candidate contributes to their funds (*Wigan 1 O. & H. 189*); unless, as in the *Wakefield* case (*2 ib. 102*), he appropriates the benefit of their acts, and in fact, tacitly or otherwise, permits and sanctions their co-operation (*Londonderry, 21 L. T. 709*.) Thus, in the *Blackburn* case (*1 O. & H. 200*), the candidate having adopted circulars issued by a political association, and addressed to "every manager, overlooker, tradesman, and any other person having influence in the borough," it was held that these circulars were "the foundation of authority and agency, such as existed in the election, and made an agent of every person having authority, down to the last grade, that of overlookers over the hands." Agency of political societies, &c.

On the other hand, where the candidate, at the outset, openly declares his intention to canvass personally without the aid of committees, the agency of a political association is negatived (*Harwich, 44 L. T. 189*; *cp. Chester, 3 O. & H. 148*). In the *Wigan* case (*4 O. & H. 1*) the secretary of a political

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association, who had issued circulars and otherwise taken a leading part in the election, was held to be an agent. But, on the other hand, in an earlier case at the same place (1 O. & H. 188), where it was proved that some months before the election, a sub-agent of a political association, of which respondent was a member, and to which he subscribed, was guilty of corruption, it was held that the agency was insufficient to upset the election; and, in the *Westminster* case (1 O. & H. 89), Martin B., held that no agency was established between the respondent and a canvasser acting for an independent association. For there was “an agency independent of the respondent’s agency, and this body were acting on their own behalf” (20 L. T. 246). But where the association has been formed to promote the respondent’s candidature, and it was in continual communication with his agent, who attended its meetings and one of its leading members canvassed for the respondent, agency was held to be proved (*Bewdley* 3 O. & H. 145). Lopes, J., in that case, thus explained the law: “There may be in a borough a political association existing for the purpose of a political party, advocating the cause of a particular candidate, and largely contributing to his success, yet in no privity with the candidate or his agents, an independent agency, and acting on its own behalf. To say that the candidate should be responsible for the corrupt acts of any member of that association would be unjust, against common sense, and opposed to law. There may, on the other hand, be a political association advocating the views of a candidate, of which that candidate is not a member, to the funds

Bewdley case.

of which he does not subscribe, and with which he personally is not ostensibly connected, but at the same time, in intimate relationship with his agents, utilised by them for the purpose of carrying out his election, interchanging communication and information with his agents respecting the canvassing of voters and the conduct of the election, and largely contributing to the result. To say that the candidate is not responsible for any corrupt acts done by an active member of such an association, would be repealing the Corrupt Practices Act, and sanctioning a most effective system of corruption."

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The facts of any particular case may of course favour the presumption, and even be taken to prove that the candidate sanctioned the proceedings of the committee, as for instance, where things are openly done, which would not be done in the ordinary course of things, except with the cognisance of a candidate who sanctioned them, "and where neither he nor his agents have shown that they had had no communication with the association, or that they repudiated it" (*Taunton*, 1. O. & H. 181). In this case the bribery took the form of payments to the voters on the eve of an election in November, nominally for their attendance at the registration court in September.

Conduct of candidate proof of agency.

And now the definition of *person*, as including associations and members thereof (s. 64), considerably extends the law on this point.

Coalition between Candidates.—In the case of coalition or the joint candidature of two candidates, each of them becomes the agent of the other, and the agents of the one become the agents of the other, so

Agency in case of joint candidature.

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that bribery by the one or by his agents affects the other also. But personal bribery (*e.g.*, employment of persons disqualified through previous bribery) proved against the one candidate only will not affect the other (*N. Norfolk*, 1 O. & H. 240). Nor is a candidate liable for the acts of his colleague or his colleague's agent, done previously to the coalition without his knowledge (*Boston*, 2 O. & H. 166). And if an agent bribed a voter to *plump* for one of the two candidates, this will not, *semble*, affect the other, as such action would determine the joint agency (*Norwich*, 2 O. & H. 39).

Coalition between two candidates is not proved by the mere fact that one agent acts for both at the registration courts (*Tamworth*, 1 O. & H. 75, 82), nor by the fact that the one candidate subscribes to the election fund of another (*Belfast*, 1 O. & H. 285), but such facts as that the candidates stood and canvassed jointly, having joint bills and payments, &c., will be held sufficient evidence (*Bridgwater*, 1 O. & H. 113, *N. Norfolk*, *ib.* 240).

Joint candidatures under Act of 1883.

And now it is provided by pt. v. of Sched. I., that "where the same election agent is appointed by or on behalf of two or more candidates at an election, or where two or more candidates by themselves, or any agent or agents, hire or use the same committee-rooms for such election, or use or employ the services of the same sub-agents, clerks, messengers or polling agents at such election, or publish a joint address or joint circular or notice at such election, those candidates shall be deemed, for the purposes of this enactment, to be joint candidates at such election." But provision is also made for joint candidatures arising

accidentally, and also for their ceasing during the election. (*See, infra*, p. 310.)

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A candidate may now also constitute himself his own agent (s. 24).

As (unless previously determined in any of the ways above-mentioned, *N. Norfolk*, 1 O. & H. 243) agency terminates with the election, any corrupt payment made by a person who has been merely a member of committee or a canvasser, and made after the election, *i.e.*, after declaration of poll (*Galway*, 2 O. & H. 49), will not affect the member, unless made with his privity (*Salford*, 1 O. & H. 140; *King's Lynn*, *ib.* 208; *Taunton*, 2 O. & H. 69). But this does not apply to the duly appointed agent for election expenses (*see below*), nor to the case of bribes given at an election in pursuance of a previous promise, &c.

Proof of bribery before proof of agency.—Under s. 17 of the P. E. Act, 1868, “On the trial of an election petition, unless the Judges otherwise direct, any charge of a corrupt practice may be gone into, and evidence in relation thereto received, before any proof has been given of agency on the part of any candidate in respect of such corrupt practice.” When bribery may be proved before agency.

This provision is intended to meet the case of general bribery or treating, &c., which by the common law of itself avoids an election, no proof of agency being in such a case necessary; but evidence of acts done by a person whom there would be little hope of proving to be an agent is to be deprecated, as likely to prejudice the Judges' minds (*pr. Bramwell, B., Bristol*, 2 O. & H. 29).

Sec. 6:

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Punishment
of person
convicted on
indictment
of corrupt
practices.

6. (1.) A person who commits any corrupt practice other than personation, (a) or aiding, abetting, counselling, or procuring the commission of the offence of personation, shall be guilty of a misdemeanour, and on conviction on indictment (b) shall be liable to be imprisoned, with or without hard labour, for a term not exceeding one year, or to be fined any sum not exceeding two hundred pounds.

(2.) A person who commits the offence of personation, (a) or of aiding, abetting, counselling, or procuring the commission of that offence, shall be guilty of felony, and any person convicted thereof on indictment shall be punished by imprisonment for a term not exceeding two years, together with hard labour.

(3.) A person who is convicted on indictment of any corrupt practice shall (in addition to any punishment as above provided) be not capable (c) during a period of seven years from the date of his conviction :

- (a) of being registered (d) as an elector or voting (e) at any election in the United Kingdom, whether it be a Parliamentary election or an election for any public office, within the meaning of this Act; or
- (b) of holding any public or judicial office (f) within the meaning of this Act, and if he holds any such office the office shall be vacated.

(4.) Any person so convicted of a corrupt practice in reference to any election, shall also be incapable of being elected to and of sitting in the House of Commons during the seven years next after the date of his conviction, and if at that date he has been elected to the House of Commons his election shall be vacated from the time of such conviction.

This section imposes (a) penalties in the shape of imprisonment and fine; (b) incapacities as to franchise upon all persons, whether candidates, electors, or non-electors, who are convicted of being guilty of corrupt practices. In the case of personation, which is a felony, the Court has no option, but must inflict hard labour. But for the other offences, the punishment may be either imprisonment with or without hard labour, or a fine. The incapacities attach in

every case. The section applies only to corrupt practices, of which the offender is personally guilty. Sec. 6.
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(a) "*Personation*."—See notes to s. 3, *supra*, p. 102. The aiding, abetting, &c., of personation involves the same punishment.

(b) "*On Indictment*."—The Public Prosecutor is charged with the duty of attending the trials of election petitions and prosecuting offenders against the Act; and the indictment will then be summarily tried before the Election Court (unless the offender elect to be tried by a jury), in which case (and also, if he fails to appear, or for other reasons, the Court thinks it expedient) he will be committed for trial or held to bail (s. 43). Duty of Public
Prosecutor.

In the case of personation also, it is the duty of the returning officer, under s. 24 of the Ballot Act, to institute a prosecution; and a still more summary method of proceeding against a person accused of personation is provided by ss. 86–89 of the Registration Act, 1843. (*See Appendix*, p. 329.)

By s. 10 of the C. P. Act, 1854, "No indictment for bribery or undue influence shall be triable before any Court of Quarter Sessions." And by virtue of s. 53 (1) of the Act of 1883, this provision is extended to all corrupt practices within the Act, which will include *false declarations* under s. 33 (7), as well as the offences named in s. 3.

By virtue of ss. 77 & 78 of the M. C. Act, 1882, the definitions of corrupt practices in Parliamentary elections, and the *punishments* imposed by this section, will apply also to the same offences committed at municipal elections. But the incapacities inflicted under this section will not attach in the case of

SECS. 6, 7. municipal elections. (*See* s. 79 of the M. C. Act, 1882, Appendix, p. 418.)

(c) "*Incapable of*," &c.—In addition to the incapacities hereby imposed, there is the prospect of disgrace in his profession, if a justice of the peace, barrister, &c., and loss of licence, if a licensed person, under s. 38.

(d) "*Registered*."—*See* s. 39.

(e) "*Voting*."—To vote when prohibited, or induce or procure another disqualified person to do so, is an illegal practice, s. 9 (1), and his vote is void (ss. 36, 37).

(f) "*Public or Judicial Office*."—*See* s. 64.

Section 52 permits a person charged with a corrupt practice to be found guilty of an illegal practice only.

Illegal Practices.

Certain expenditure to be illegal practices.

7. (1.) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at any election, be made—

- (a) On account of the conveyance (a) of electors to or from the poll, whether for the hiring of horses or carriages, or for railway fares, or otherwise; or
- (b) To an elector (b) on account of the use of any house, land, building or premises for the exhibition of any address, bill, or notice, or on account of the exhibition of any address, bill or notice; or
- (c) On account of any committee room (c) in excess of the number allowed by the first schedule to this Act.

(2.) Subject to such exception (d) as may be allowed in pursuance of this Act, if any payment or contract for payment is knowingly made in contravention of this section either before, during, or after (e) an election, the person making such payment or contract shall be guilty of an illegal practice; and any person (f) receiving such payment, or being a party to any such contract, knowing the same to be in contravention of this Act, shall also be guilty of an illegal practice.

(3.) Provided that where it is the ordinary business of an elector as an advertising agent to exhibit for payment bills and advertisements, a payment to or contract with such elector, if made in the ordinary course of business, shall not be deemed to be an illegal practice within the meaning of this section.

Sec. 7.
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Sub-sections 7-12 deal with offences which are punishable as illegal practices (under s. 10), by whomsoever committed, and their commission by *any* agent is sufficient to avoid the election (s. 11).

The offences under the head of illegal payments, &c. (ss. 13-21), become illegal practices, and consequently avoid the election only when committed by the candidate or his election agent.

This section makes it an illegal practice—

- (a) To pay or contract to pay the travelling expenses of electors to or from the poll;
- (b) To pay or contract to pay an elector for advertisements, except in the way of his ordinary business;
- (c) To pay or contract to pay for any committee room in excess of the statutory number.

The payee or contractee is equally guilty, but in either case it must be done knowingly in contravention of this section.

(a) "*Conveyance*."—All payment for conveyance of electors to or from the poll is now definitely prohibited, both in counties and boroughs, except in certain cases where the sea, or an arm of it, must be crossed (s. 48).

Travelling
expenses
forbidden.

But there is nothing in the Act to prevent persons or candidates who own private carriages and horses, or (where travelling is by water) boats, steam

Sec. 7. launches and yachts, from *lending* them during an election for such a purpose, but such lending must be a *bond fide* transaction; and not upon the understanding, express or implied, that the lender shall receive any reward for so doing. For "*payment*" includes any pecuniary or other reward (s. 64). And it is submitted that where, *e. g.*, the candidate, not being resident in the constituency, hires *on job* a carriage for his own use during the contest, he might, without infringing this section, or s. 14, use it (as his private carriage) to bring up his supporters to the poll. For under either section the prohibition is against hiring for the conveyance of voters to and from the poll, which, in the case suggested, would not have been the case.

Hire of conveyances under this section, and s. 14.

It is to be observed that, under this section, the hiring of conveyances is made an illegal practice by whomsoever done, and such hiring will consequently always avoid the election. Under s. 14, however, the employment of hackney carriages, whether by hire or otherwise, is only an illegal payment, which therefore, except in the case of the election agent, s. 21 (2), is insufficient to upset the election. It is not difficult to see that questions may, and probably will, arise as to whether a particular instance of hiring comes under the 7th or the 14th section, inasmuch as the result would be very different, both as to the punishment and the effect upon the election. The 14th section, so far as concerns letting and hiring, really falls within the more general terms of the 7th section; for it is difficult to see how a person can let or hire a carriage without either payment passing,

or a contract for payment being entered into—both of which are equally an *illegal practice* under s. 7. And therefore it may fairly be said that, in this case, *omne majus continet in se minus*; but upon a strict application of the rule that, “where a general intention is expressed, and also a particular intention incompatible with the general one, the particular intention is considered an exception to the general one,”* it would doubtless be necessary to except from the severer penalty of the present section any case of hiring or letting which would come within the terms of s. 14. It is, however, submitted that the two sections are really directed against two entirely distinct classes of cases—s. 7 prohibiting any payment to, or contract with, electors for payment of their travelling expenses, whether directly with themselves, or indirectly through others (*see Cooper v. Slade*, 6 H. L. C. 747), while s. 14 is intended to prevent large jobmasters, cab proprietors, and livery stable keepers, from evading the 7th section by either lending or letting their conveyances wholesale in view of the election, and perhaps some time before hand, to some agent or committee of the candidate, or a political association, nominally perhaps for some other purpose, but really for the conveyance of voters.

An elector, moreover, or several electors jointly, may hire conveyances for their own use (s. 14).

New provision is made by s. 47 (and in Ireland, s. 69, sub-sec. 9) for the increase of polling centres both in boroughs and in counties.

Sec. 7.
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* Maxwell, p. 202; *Churchill v. Crase*, 5 Bing. 180; *Taylor v. Corporation of Oldham*, 4 Ch. D., at p. 410.

Sec. 7.

(b) "*To an elector, &c.*"—The words "or with" are required after "to," in order to make this sub-clause read properly with the clause to which it belongs, "No payment or contract for payment shall be . . . made."

Advertisements.

The sub-section does not prohibit the employment of other persons than electors for the purpose of advertising the candidature. And the third sub-section permits an elector, whose ordinary business is that of an advertisement agent, to make such a contract in the ordinary course of his business.

"Sandwichmen" and others.

The hiring, too, of individual "sandwichmen" and other persons for the purpose of distributing bills, &c., will be a legal expense (provided the rate of payment is not out of all proportion to their services, and the maximum scale is not exceeded), as coming under the head of "expenses of publishing, issuing, and distributing addresses and notices," which are legal by Sched. 1, Part ii., "in addition to expenses under Part i." But none of the persons so employed, if electors, may vote. (Sched 1, part i. (7); Corrupt Practices Act, 1867, s. 11, and s. 9 (1) of Act, 1883.)

The clause is aimed at the wholesale hiring of windows, walls, hoardings, &c., as well as of sandwichmen and others, which has always been a notorious method of corruption. Thus in the *Westminster* case (1 O. & H. 90), it was proved that shopkeepers were paid at the rate of 7s. a week per board for merely allowing the placards to stand outside their windows, and that in this way alone £209 was spent. But, where no payment is made, there will be nothing

to prevent the occupiers of shops, &c., from exhibiting in their windows or on their walls any notices or placards they like.

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(c) "*Committee Room.*"—See Sched. 1 (p. 303). Here Committee rooms. again the prohibition affects only hired committee-rooms. If friends and supporters of a candidate choose to lend rooms for the purposes of the election, they are welcome to do so, provided they are not premises prohibited by s. 20. Section 64 (p. 290) excepts from the term "committee-room" the temporary residence of the candidate, although he may transact the business of the election therein; and also rooms in which public meetings of the electors are held. Although it is not expressly so stated, it may be presumed that the term "committee-room" would—at least in the case of the central committee-room—be held to apply to a set of offices, with separate clerks' room, and not be limited strictly to a single room; as it is obvious that, for the purposes of an election, a room must frequently be requisite in which the candidate and his supporters can consult together in private. Any question of the kind would doubtless be decided by a consideration of all the circumstances of the case, as to how far the accommodation provided was beyond the actual requirements, and so forth.

(d) "*Exception in pursuance of this Act.*"—See s. 23.

(e) "*Before, during or after.*"—See notes, *supra*, p. 94.

(f) "*Any person.*"—But the rights of creditors, ignorant of the expense, &c., being illegal, are saved under s. 19.

Sec. 8.

Expense in
excess of
maximum to be
illegal practice.

8.—(1.) Subject to such exception (a) as may be allowed in pursuance of this Act, no sum shall be paid and no expense shall be incurred by a candidate at an election or his election agent, whether before, during, or after an election, (b) on account of or in respect of the conduct (c) or management of such election, in excess of any maximum amount in that behalf specified in the first schedule to this Act.

(2.) Any candidate or election agent who knowingly acts in contravention of this section shall be guilty of an illegal practice.

This section makes the payment of any sum or the incurring of any expense by the candidate or his election agent in excess of the statutory maximum, if knowingly done in contravention of the Act, an illegal practice. But, as it may obviously happen that a candidate or his election agent might miscalculate the actual amount requisite for the election, or might even be furnished with estimates by contractors (*e.g.*, for advertisement purposes), which, in the result, turned out to be calculated on a wrong basis, the statutory exception in s. 23 relieves the candidate against the consequences of such miscalculation, upon evidence that it did not “in any case arise from want of good faith.” What evidence of good faith will, in such a case, seem to the Court sufficient, it is of course impossible to say; but it is not difficult to see that, in the absence of the strictest honesty, it would almost always be possible to bring an excess of expenditure, unless to a very largely disproportionate amount, within the statutory exception. While, however, the incurring of such expenditure beyond the legal maximum is thus punishable, the liability to pay the money at the suit of the creditor is not removed, provided the creditor was ignorant of the illegality of the transaction at the time when it was entered into (s. 19).

(a) "*Subject to such exception, &c.,*" i.e., primarily the exception allowed under s. 23. But it must also be held to include the exception of the candidates "personal expenses" (s. 64), payment of which by himself is limited to £100 (s. 31, 1), and which are by Sched. 1, part iii., expressly declared to be over and above the maximum scale. Sec. 8.
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(b) "*Whether before, during, or after the Election.*"—
See note p. 94, *supra*.

(c) "*On account of the conduct, &c.*"—This section applies only to candidates and their election agents, and has in view the expenses connected with a particular or impending election, not the expenses generally of a candidature existing before the occasion for a contest arises. Thus, the definition of a "candidate at an election" (s. 63), as "any person declared by himself or by others to be a candidate on or after the day of the issue of the writ for such election, or after the dissolution or vacancy in consequence of which such writ has been issued," will not, in this connection, include those who are, in frequent cases, publicly announced as the chosen candidates of a constituency, long before there is any prospect of an election. For the expense referred to is that "on account of, or in respect of, the conduct or management of such election." And such expenses as those connected with registration and the holding of public meetings, on occasions perhaps only indirectly connected with the candidature (*e.g.*, meetings of political associations, &c.), would not come within the meaning of this expression. But a candidate at an election is also defined as "any person elected to

Expenses in respect of conduct and management of election.

- **Secs. 8, 9.** — serve in Parliament at such election, and any person who is nominated as a candidate at such election, &c.”; and so, where, even before the occurrence of a vacancy or the dissolution of Parliament, the accepted candidate of a constituency commits any corrupt or illegal practice “for the purpose of promoting or procuring his election,” he will, whether elected or not, incur the penalties of this Act; as in the *Youghal* case (1 O. & H. 293) where a person was found guilty of treating *as a candidate*, for acts done by him in July, although the dissolution did not take place till August (*cp. Taunton*, 1 O. & H. 183; and *Penryn*, *ib.* 127).

Voting by prohibited persons and publishing of false statements of withdrawal to be illegal.

9. (1.) If any person votes or induces or procures (a) any person to vote at any election, knowing that he or such person is prohibited, whether by this or any other Act (b) from voting at such election, he shall be guilty of an illegal practice.

(2.) Any person who before or during an election knowingly publishes a false statement of the withdrawal of a candidate at such election for the purpose of promoting or procuring the election of another candidate, shall be guilty of an illegal practice.

(3.) Provided, that a candidate shall not be liable, nor shall his election be avoided, for any illegal practice under this section committed by his agent other than his election agent.

This section makes it an illegal practice either,

- (1.) For those to vote who are by this *or any other* Act prohibited; or
- (2.) For any person to induce or procure another thus prohibited, to vote; or
- (3.) To publish a false statement of the withdrawal of a candidate. But these offences affect the candidate and avoid the election only when committed by his election agent.

(a) "*Induces or Procures.*"—The inducement, if anything in the shape of money or valuable consideration within s. 2 of the C. P. Act, 1854, will make the offence bribery under that section. But in that case, the disqualification of the voter is immaterial (*Guildford*, 1 O. & H. 14, and note *supra*, p. 72). But the mere bringing up of the party to the poll and getting him to vote without any reward, &c., is sufficient under this section though the offence would not be complete unless he actually *voted*, i.e., *applied for a ballot paper* (Ballot Act, 1872, s. 15). For "procuring" means that he actually got him to vote. "To procure is to get the thing done" (*pr.* Littledale, J., in *Henslow v. Fawcett*, 3 A. & E. 56).

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(b) "*Prohibited by this or any other Act*"—

Persons disqualified to vote under this Act.

A.—By this Act:

- (1.) Paid agents legally employed in the election (Sched. 1).
- (2.) Persons guilty of corrupt or illegal practices or of illegal employment, &c., at a Parliamentary Election (s. 36).
- (3.) Persons reported or convicted either under this Act or the Municipal Corporation Acts, or any other similar Act (s. 37 and s. 64, p. 291).

B.—By any other Act:

Under other Acts.

- (1.) Electors paid for election work within six months of the election (R. P. Act, 1867, s. 11; the same provision in the Scotch and Irish Acts, 31 & 32 Vic. cc. 48 and 49, s. 8; *cp.* Ballot Act, 1872, s. 25).
- (2.) Persons who, though their names are on the register, are prohibited from voting

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—

by any Statute, or by the Common Law of Parliament (Ballot Act, 1872, s. 7). This does not refer to Paupers, &c. (*Stowe v. Jolliffe*, L. R. 9 C. P. 734), but includes the following classes: *Peers* (4 Com. Dig., Parl. D. 10, and Rog. on Elect., 192); *Women* (*Chorlton v. Lings*, L. R. 4 C. P. 374); *Aliens*, unless certificated or naturalised (33 & 34 c. 14, s. 7); *Minors* (7 & 8 Wm. III. c. 25, s. 8); *Justices, Receivers*, or persons belonging to the Metropolitan Police Court, and within the Metropolitan District, or contiguous counties (10 Geo. IV. c. 44, s. 18); *Metropolitan, Borough, and rural police* in Scotland and Ireland as well as England (*cp. Bewdley*, 1 O. & H. 175, where the vote of a constable was struck off), but not *special constables* (*see* Rog. Elect. 486); *Felons*, unless pardoned, until they have completed their sentence, and persons convicted of treason (33 & 34 Vic. c. 23, s. 2); but the prohibition does not extend to persons guilty of misdemeanours, though the Court of Queen's Bench will refuse a writ of *Habeas Corpus* to enable such to vote (*ex parte Jones*, 2 A. & E. 437); *Returning Officer*, at the election over which he presides, unless there is an equality of votes (Ballot Act, 1872, s. 2).

- (3.) *Paupers*.—(30 & 31 Vic. c. 102, s. 40, and in Scotland, 31 & 32 Vic. c. 48, s. 50).

- (4.) Persons reported guilty of bribery in certain disfranchised towns (R. P. Act, 1867, ss. 13-16; *cp.* 39 & 40 Vic. c. 72, s. 2). Secs. 9, 10.

10. A person guilty of an illegal practice, whether under the foregoing sections (a) or under the provisions hereinafter contained in this Act, shall on summary conviction (b) be liable to a fine not exceeding one hundred pounds, and be incapable during a period of five years from the date of his conviction of being registered (c) as an elector, or voting at any election (whether it be a Parliamentary election or an election for a public office (d) within the meaning of this Act) held for or within the county or borough in which the illegal practice has been committed. Punishment on conviction of illegal practice.

(a) "*Under the foregoing sections.*"—Under these, any person is guilty of an illegal practice, whether candidate, election, or other agent, elector or non-elect, except that s. 8 applies only to a candidate and his election agent; but under "*the provisions hereinafter contained,*" viz., ss. 13-21, 29 (2), 33 (6), the offences therein specified are illegal practices only when committed by candidates or election agents. Section 28, however, declaring the making of payments, advances and deposits, except through the election agent, to be an illegal practice, applies to all persons.

See s. 52, which permits of a person charged with a corrupt practice being found guilty of the less serious offence of illegal practice, &c.

See also ss. 36 & 37, which disfranchise persons guilty of illegal practices; and s. 38 (ss. 6-9), which provides for the disgrace of justices of the peace, professional men, &c.

(b) "*On summary conviction.*"—This may be either on prosecution before the Election Court, s. 43 (4), in which case there is no appeal, s. 55 (1), or under the

Secs. 10, 11. Summary Jurisdiction Acts, in which case an appeal lies to quarter sessions (s. 54).

(c) "*Registered.*"—See provisions as to the Registration Courts (s. 39).

(d) "*Public Office.*"—See s. 64, *infra* p. 290.

Report of
election Court
respecting
illegal practice,
and punishment
of candidate
found guilty by
such report.
31 & 32 Vic.
c. 125.

11. Whereas by sub-sec. 14 of s. 11 of the Parliamentary Elections Act, 1868, it is provided that where a charge is made in an election petition of any corrupt practice having been committed at the election to which the petition refers, the judge (a) shall report in writing to the Speaker as follows:—

- (a) "Whether any corrupt practice has or has not been proved to have been committed by or with the knowledge and consent (b) of any candidate at such election, and the nature of such corrupt practice;
- (b) "The names of all persons, (c) if any, who have been proved at the trial to have been guilty of any corrupt practice;
- (c) "Whether corrupt practices have, or whether there is reason to believe corrupt practices have, extensively prevailed (d) at the election to which the petition relates:"

And whereas it is expedient to extend the said sub-section to illegal practices:

Be it therefore enacted as follows:—

Sub-sec. 14 of s. 11 of the Parliamentary Elections Act, 1868, shall apply as if that sub-section were herein re-enacted with the substitution of illegal practice within the meaning of this Act for corrupt practice; and upon the trial of an election petition respecting an election for a county or borough, the election court shall report in writing to the Speaker the particulars required by the said sub-section as herein re-enacted, and shall also report whether any candidate at such election has been guilty by his agents of any illegal practice within the meaning of this Act in reference to such election, and the following consequences shall ensue upon the report by the election court to the Speaker (that is to say);

- (a) If the report is that any illegal practice has been proved to have been committed in reference to such election (e) by or with the knowledge and consent of any candidate at such election, that candidate

shall not be capable of being elected to or sitting in the House of Commons for the said county or borough for seven years next after the date of the report, and if he has been elected his election shall be void; and he shall further be subject to the same incapacities (f) as if at the date of the report he had been convicted of such illegal practice; and

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—

- (b) If the report is that a candidate at such election has been guilty by his agents of any illegal practice in reference to such election, that candidate shall not be capable of being elected to or sitting in the House of Commons for the said county or borough during the Parliament for which the election was held, and if he has been elected, his election shall be void.

This section extends to illegal practices the provisions of the Parliamentary Elections Act, 1868, relating to corrupt practices, contained in sub-sec. 14 of s. 11. These provisions are not, however, repealed, and therefore remain in force in respect of corrupt practices also. For the consequences which ensue upon a report that corrupt practices have been committed, *see* ss. 4-6.

As regards illegal practices, the effect of this section is as follows:—

1. Where illegal practices are reported by the Court to have been committed *by or with the knowledge and consent of the candidate*—

- (a) To disqualify him for seven years after date of the report for a seat in the House for the constituency in question;
- (b) Avoidance of his seat if elected;
- (c) Liability on summary conviction to fine not exceeding £100 (s. 10);
- (d) Incapacity for five years from date of conviction to be registered as an elector,

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—

or vote in any election, Parliamentary or otherwise, in the constituency in question (s. 10) ;

- (e) Incapacity to vote or avoidance of vote, if given, at the election in question (ss. 36 & 37) ;
- (f) Liability to disgrace in the case of justices of the peace and professional men, and loss of licence to licensed persons (s. 38, sub-secs. 6-9).

2. Where the report is that illegal practices have been committed *by his agents* only—

The candidate may not sit during the existing Parliament for the constituency in question, or if elected for the same, his election is void.

(a) "*The Judge*," now "*the Judges*," the 42 & 43 Vic. c. 75 having enacted that the Election Court shall consist of *two* instead of one.

(b) "*By or with the knowledge and consent*."—See notes to s. 4.

(c) "*Of all persons*." — This will include the candidate himself, if personally guilty.

(d) "*Extensively prevailed*."—Without necessarily tracing them to any particular person, as in the case also of general bribery or general treating.

(e) "*In reference to such election*."—Not "*at*," for an illegal practice is equally punishable whether committed *before*, during, or *after* the election.

(f) "*The same incapacities*."—See s. 10.

For cases where the Court has power to give relief, both as to avoidance of seat and other incapacities, see s. 22.

Before a person, not a petitioner or candidate Secs. 11, 12.
claiming the seat, can be reported by the Court, he
must be given an opportunity of defending himself
against the charges brought against him. See
s. 38 (1).

As to the effect to be given to the Report of the
Election Judges, it is provided by the P. E. Act,
1868, s. 13, that "the House of Commons, on being
"informed by the Speaker of such certificate and
"report, or reports, if any, shall order the same to
"be entered in their journals, and shall give the
"necessary directions for confirming or altering the
"return, or for issuing a new writ for a new election,
"or for carrying the determination into execution,
"as circumstances may require." And "where the
"Judges make a special report, the House of
"Commons may make such order in respect thereof
"as they think proper" (s. 14).

Moreover, the Public Prosecutor is to attend the
trial of election petitions, and obey any directions
given to him by the Court, either for summoning
witnesses or for prosecuting offenders (s. 43); and
he is also to act upon any information given to him
that any corrupt or illegal practices have prevailed
in reference to any election (s. 45).

The report of the Election Court or Commissioners
is also to state whether the persons reported have,
or not, received certificates of indemnity, and is
further to be submitted to the Attorney-General,
with a view to his instituting such prosecutions as
he may deem necessary (s. 60).

12. Whereas by the Election Commissioners Act, 1852, as Extension of
amended by the Parliamentary Elections Act, 1868, it is 15 & 16 Vic.
enacted that where a joint address of both Houses of Parlia- c. 57, respecting
election

Sec. 12.

commissioners
to illegal
practices.
15 & 16 Vic.
c. 57.
31 & 32 Vic.
c. 125.

ment represents to Her Majesty that an election Court has reported to the Speaker that corrupt practices have, or that there is reason to believe that corrupt practices have, extensively prevailed at an election in any county or borough, and prays Her Majesty to cause inquiry under that Act to be made by persons named in such address, being qualified (a) as therein mentioned, it shall be lawful for Her Majesty to appoint the said persons to be election commissioners for the purpose of making inquiry into the existence of such corrupt practices:

And whereas it is expedient to extend the said enactments to the case of illegal practices:

Be it therefore enacted as follows:

15 & 16 Vic.
c. 57.

When election commissioners have been appointed in pursuance of the Election Commissioners Act, 1852, and the enactments amending the same, they may make inquiries and act and report as if "corrupt practices" in the said Act and the enactments amending the same included illegal practices; and the Election Commissioners Act, 1852, shall be construed with such modifications (b) as are necessary for giving effect to this section, and the expression "corrupt practice" in that Act shall have the same meaning (c) as in this Act.

This section extends to illegal practices the provisions respecting corrupt practices contained in the Election Commissioners Act, 1852 (15 & 16 Vic. c. 57), as amended by the Parliamentary Elections Act, 1868 (31 & 32 Vic. c. 125, ss. 15 and 56).

Election
Commissioners.

The former Act (App. p. 333) provides for the appointment of Commissioners to make inquiry into the existence of corrupt practices upon the report of an election committee, and their reports are to be laid before Parliament within one calendar month after they have been made (s. 7). The latter Act (s. 15) provides that the same course shall be pursued upon a similar report of the election Judges, and further enacts (s. 56) that Commissioners may similarly be appointed for the same purpose, upon petition to

the House of Commons, presented within 21 days after the return of a member, or within 14 days after the meeting of Parliament, and signed by any two or more of the electors, and alleging that corrupt practices have extensively prevailed. Secs. 12, 13.

(a) "*Being qualified*," &c., i.e., "(where the inquiry to be made relates to a place in England or Ireland) barristers-at-law of not less than seven years' standing; or (where such inquiry relates to a place in Scotland) advocates of not less than seven years' standing; and not being members of Parliament, or holding any office or place of profit under the Crown, other than that of a Recorder of any city or borough" (15 & 16 Vic. c. 57, s. 1).

(b) *With such modifications, &c.*—Further modifications will be necessary in consequence of s. 49 of this Act, which forbids any inquiry by Commissioners after the passing of this Act into elections held before that Act. See note on p. 336.

(c) "*The same meaning*," &c, i.e., it will include a false declaration as to election returns (s. 33, subsec. 7), as well as the four principal corrupt practices. See s. 3.

For the incapacities, &c., resulting from the report of the Commissioners, see ss. 10 & 38.

Illegal Payment, Employment and Hiring.

13. Where a person (a) knowingly provides money (b) for any payment which is contrary to the provisions of this Act (c), or for any expenses in excess of any maximum (d) amount allowed by this Act, or for replacing any money expended in any such payment or expenses, except where the same may have been previously (e) allowed in pursuance of this Act to be an exception (f), such person shall be guilty of illegal payment. Providing of money for illegal practice or payment to be illegal payment.

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—

“Illegal Payment,” &c.—The offences coming under this head do not avoid the election, unless committed by the candidate or his *election* agent, when they become punishable as illegal practices, s. 21 (2).

Section 8 made it an illegal practice for a candidate or election agent knowingly to pay sums or incur expenses in excess of the legal maximum. This section (i.) declares the same act in any other persons to be an illegal payment, punishable as provided by s. 21 (1); (ii.) prohibits as an illegal payment the providing of money for any payment which is contrary to the provisions of this Act; or for replacing any money so expended.

(a) *“Person”* includes “an association or body of persons, &c.” (s. 64, *infra*, p. 290).

(b) *“Money.”*—Not merely hard cash or valuable securities and other equivalents, but also “any office, place, or employment” (s. 64, *infra*, p. 292); so payment means “any pecuniary or other reward” (*ib.*). Under s. 28 the providing of any money by any person other than the candidate, whether as gift, loan, advance, or deposit, is itself an illegal practice, unless paid to the candidate or his election agent.

(c) *“Provisions of the Act,”* viz., ss. 7, 14-17, 20, 28 and 29.

(d) *“Maximum.”*—See Sched. 1, part iv., *infra*, p. 307.

(e) *“Previously.”*—Hence if the money has been knowingly provided *before* the application under s. 23, to allow it to be an exception, has been granted, the transaction will still be illegal, although sufficient cause might be shown to justify the allowance of the exception.

(f) "*Exception.*"—See s. 23.

Secs. 13, 14.

This section is studiously general as to time. If the money is provided *knowingly*, it matters not how long before or after an election the transaction takes place. And further, it is not the payment only, but the mere providing of the money which is forbidden. So that the deposit (s. 28) or setting apart of any sum for any such purpose, *e.g.*, with one's bankers, to be drawn against by other parties, would, even in the event of its not being so drawn upon, constitute illegal payment under this section; and so, it is submitted, the drawing of a cheque would be equally illegal, even if it were not cashed.

14. (1.) A person shall not let, lend, or employ (a) for the purpose of the conveyance of electors to or from the poll, any public stage or hackney carriage, or any horse or other animal kept or used for drawing the same, or any carriage, horse, or other animal which he keeps or uses for the purpose of letting out for hire, and if he lets, lends, or employs such carriage, horse, or other animal, knowing that it is intended to be used for the purpose of the conveyance of electors to or from the poll, he shall be guilty of an illegal hiring.

Employment of hackney carriages, or of carriages and horses kept for hire.

(2.) A person shall not hire, borrow, or use for the purpose of the conveyance of electors to or from the poll any carriage, horse, or other animal which he knows the owner thereof is prohibited by this section to let, lend, or employ for that purpose, and if he does so he shall be guilty of an illegal hiring.

(3.) Nothing in this Act shall prevent a carriage, horse, or other animal being let to or hired, employed, or used by an elector, or several electors at their joint cost, (b) for the purpose of being conveyed to or from the poll.

(4.) No person shall be liable to pay any duty (c) or to take out a licence for any carriage by reason only of such carriage being used without payment or promise of payment (d) for the conveyance of electors to or from the poll at an election.

This section prohibits, as an illegal employment, and hiring, the letting, lending or employing for the conveyance of electors to or from the poll, of public,

Sec. 14. — stage or hackney carriages, or of carriages, horses, or other animals kept for the purpose of letting out for hire. And it is equally illegal to *hire, borrow, or use* the same for the same purpose. But an elector, or several electors at their joint cost, may hire a vehicle to go to or from the poll in.

(a) "*Let, lend, or employ.*"—These words cover each of the following cases:—

- (1.) A jobbing master, or cab proprietor, who might wish to let his horses or vehicles for the conveyance of electors to or from the poll, except as permitted by sub-sec. 3.
- (2.) A jobbing master or cab proprietor who, as a staunch supporter of a candidate, might wish to assist him in his election by *lending* his horses or vehicles.
- (3.) A jobbing master or cab proprietor who, being himself a candidate, might wish to employ or use his own horses or vehicles for the same purpose.

See notes to s. 7.

(b) "*At their joint cost.*"—This proviso is open to the remark that there seems to be nothing to prevent one rich elector from conveying a certain number of electors practically at his own cost—they paying merely a nominal sum as their share of the expense. Thus a person might hire a large van or brake capable of holding 20 or 30 others, and convey them along with himself to or from the poll at a small charge per head. But as no definition of the expression "*joint cost*" is given, it will be open to put a narrower as well as a wider construction upon it. And the former,

requiring the joint payment to be more or less equally shared amongst those hiring the conveyance for their own use, will clearly be more in accord with the whole spirit of the Act. It would, however, in any case, not be permissible for the hirer, in the case supposed, to make more than one such journey—

(c) "*Pay any Duty, &c.*"—The object of this sub-section is to enable farmers, tradesmen, and others to use their carts and wagons for the purpose of conveying themselves and others to or from the poll, without thereby rendering themselves liable to the duty, which is imposed by the Customs and Inland Revenue Act, 1869, upon "any vehicle drawn by a horse or mule, except a wagon, cart or other vehicle used *solely* for the conveyance of any goods or burden in the course of trade or husbandry, and having the name, &c., of the owner legibly painted in letters of not less than one inch in length;" the only exception heretofore permitted being in the use of such conveyances for the purpose of going to a "place of divine worship on Sundays" (35 & 36 Vic. c. 20, s. 6). It will be understood that it will be illegal (s. 7) to hire out such vehicles for the conveyance of voters, even for their own use (under sub-sec. 3), the doing of which would as well render them liable to the duty, but to lend them voluntarily will be quite legitimate.

Certain carts, &c., exempt from carriage duty.

(d) "*Payment*" includes any pecuniary or other reward (s. 64, p. 292).

15. Any person who corruptly induces or procures any other person to withdraw from being a candidate at an election, in consideration of any payment or promise of payment, shall be guilty of illegal payment, and any person withdrawing in pursuance of such inducement or procurement shall also be guilty of illegal payment.

Corrupt withdrawal from a candidature.

Secs. 15, 16. Under the Ballot Act (s. 1), "A candidate may, during the time appointed for the election (viz: such two hours between 10 a.m. and 3 p.m., as may be appointed by the Returning Officer for the nominations to be made), *but not afterwards*, withdraw from his candidature" (Rule 4); and moreover, "If in the case of any candidate security is not given or tendered within one hour of the two hours aforesaid, he shall be deemed to be withdrawn" (38 & 39 Vic. c. 84, s. 3).
 "Payment," it must be remembered, includes "Any pecuniary or other reward" (s. 64, p. 292).

Certain expenditure to be illegal payment.

16. (1.) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at any election, be made on account of bands of music, torches, flags, banners, cockades, ribbons or other marks of distinction.

(2.) Subject to such exception (a) as may be allowed in pursuance of this Act, if any payment or contract for payment is made in contravention of this section, either before, during, or after an election, the person making such payment shall be guilty of illegal payment, (b) and any person (c) being a party to any such contract or receiving such payment shall also be guilty of illegal payment if he knew that the same was made contrary to law.

C. P. Act, 1854,
s. 7.

Under s. 7 of the C. P. Act, 1854, which is still in force, "No *candidate* before, during, or after "an election shall, in regard to such election, by "himself or agent, directly or indirectly* give or "provide to or for any person having a vote at such "election, or to or for any inhabitant of the county, "city, borough, or place for which such election is "had, any cockade, ribbon, or other mark of distinction; and every *person* so giving or providing "shall for every such offence forfeit the sum of £2 "to such person as shall sue for the same, together "with full costs of suit."

* See note, *supra*, p. 42.

As to the meaning of this section, Martin, B., Sec. 16.
 thus expressed himself in the *Nottingham* case (1
 O. & H. 246): "The law (of 1854) prohibits the Wearing of
favour, &c.,
forbidden.
 wearing of favours in the most direct terms. It
 does not put it so as to affect the seat, but it clearly
 directs that it should not be done."

The effect of these two sections taken together is
 as follows:—

- (1.) No person, either candidate or otherwise,
 may make any payments (*i.e.*, "pecuniary
 or other reward," s. 64), either before,
 during, or after an election, for bands, &c.
- (2.) No *candidate* may, either before, during,
 or after an election, give or provide to or
 for any voter, or any inhabitant of the
 place where the election is, any cockade,
 ribbon, or other mark of distinction.
- (3.) Every *person* (whether candidate or other-
 wise) giving or providing such cockades,
 ribbons, or other marks of distinction, is
 liable to be sued, and to forfeit (with full
 costs) £2 for each offence.
- (4.) Any person making such payment, or
 party to any contract for, or receiving
 payment for such bands, &c., is, if he
 knew the same was made contrary to law,
 and unless he can get the benefit of the
 statutory exception (s. 23), guilty of
 illegal payment.

Therefore, while it is made illegal for any one to
 pay, or contract to pay, for *any* of the marks of
 distinction enumerated in s. 16, or to give or provide
 "any cockade, ribbon, or other mark of distinction"

Secs. 16 17. (s. 7 of Act of 1854), it is not illegal to provide bands, torches, flags and banners, if no payment for the same or contract for payment, is made, *payment* being of course understood in the enlarged sense attached to it in s. 64.

(a) "*Exception.*"—For the statutory exception, *see* s. 23.

(b) "*Any person.*"—The rights of innocent creditors are saved by s. 19.

(c) "*Illegal payment,*" and in the case of candidate or election agent, of illegal practice, which would avoid the election (s. 21).

Certain
employment to
be illegal.

17. (1.) No person shall, for the purpose of promoting or procuring the election of a candidate at any election, be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever, except for any purposes or capacities mentioned in the first or second parts of the First Schedule to this Act, or except so far as payment is authorised by the first or second parts of the First Schedule to this Act.

(2.) Subject to such exception (a) as may be allowed in pursuance of this Act, if any person is engaged or employed in contravention of this section, either before, during, or after an election, the person engaging or employing him shall be guilty of illegal employment, (b) and the person so engaged or employed shall also be guilty of illegal employment if he knew that he was engaged or employed contrary to law.

For the number and respective capacities of those who may be legally employed for payment under the Act, *see* Sched. 1, *infra*, p. 303.

The prohibition, which includes others as well as electors, extends only to persons *paid* for their services, payment meaning not only pecuniary reward, but also any office, place, employment, &c., as defined in s. 64. It will thus be seen that, in future, no paid watchers, canvassers, runners,

et hoc genus omne, whose employment used to be a fertile source of corruption, will be allowed. But volunteers in any of these capacities may of course give their services.

This section is to be read in conjunction with Sched. 1, and is not, it is submitted, intended to apply to such persons as a permanent salaried registration agent and his staff, who are usually the officials of a party organisation; although, in one sense, they are employed “for the purpose of promoting or procuring the election of a candidate.” However, unless they confined themselves very exclusively to the duties of registration, it might easily happen that they would find themselves, for some cause or other, acting in contravention of this section.

(a) “*Such exception, &c.*”—See s. 23 and Sched. 1, in addition to which electors, whose ordinary business is that of advertisement agents, may be so employed (s. 7).

(b) “*Illegal Employment*,” unless it be the candidate or his election agent, when it is an illegal practice (s. 21).

Those who are employed in accordance with Sched. 1, may or may not be electors, but may not vote. And “no elector who within six months “before or during any election for any county or “borough shall have been retained, hired or “employed for all or any of the purposes of the “election, for reward by or on behalf of any candidate at such election as agent, *canvasser*,(*) clerk, “messenger, or in other like employment, shall be “entitled to vote at such election, and if he shall

(*) Paid canvassers are no longer allowed under this section and Sched. 1.

Secs. 17, 18. "so vote he shall be guilty of misdemeanour" (30
— "& 31 Vic. c. 102, s. 11).

"Every employment of a voter for reward, for the purpose of influencing his vote, is in itself an indictable offence. And if the voter so employed votes, another offence is committed, both by him and by the person who incited him to vote. Both may be indicted and punished for a second misdemeanour" (*pr. Lush, L. J., Oxford, 3 O. & H. 156*).

In addition to the above, returning officers, their clerks, partners and deputies may not act as agents (R. P. Act, 1867, s. 11), nor may corrupt agents (*i.e.*, who have been found guilty of any corrupt practice within seven years last past) be employed (P. E. Act, 1868, s. 44. *See s. 24, infra, p. 166*).

By s. 36, if any person thus guilty votes at the election at which the offence was committed, his vote is void.

Name and
address of
printer on
placards.

18. Every bill, placard, or poster having reference to an election shall bear upon the face thereof the name and address of the printer and publisher thereof; and any person printing, publishing, or posting, or causing to be printed, published, or posted, any such bill, placard, or poster as aforesaid, which fails to bear upon the face thereof the name and address of the printer and publisher, shall, if he is the candidate, or the election agent of the candidate, be guilty of an illegal practice, and if he is not the candidate, or the election agent of a candidate, shall be liable on summary conviction to a fine not exceeding £100.

The form of this section differs from that of those which precede and which follow it, owing, apparently, to the difficulty of otherwise defining the offence, which is intended to belong to the class of illegal payment, hiring, &c., though it could hardly be properly so called. As belonging to that class, it

does not affect the validity of the election, unless Secs. 18-20.
 committed by a candidate or his election agent, when
 it causes the loss of the seat (*cp. ss. 10 and 21*).

19. The provisions of this Act prohibiting certain payments Saving for
creditors.
 and contracts for payments, and the payment of any sum, and
 the incurring of any expense in excess of a certain maximum,
 shall not affect the right of any creditor, who, when the
 contract was made or the expense was incurred, was ignorant
 of the same being in contravention of this Act.

And he therefore has his remedy against the
 candidate or his agent, although the latter will not
 be relieved of the penalties attaching to their act
 (*cp. s. 27, sub-sec. 2*).

20. (a) Any premises on which the sale by wholesale or Use of
committee room
in house for
sale of
intoxicating
liquor or
refreshment, or
in elementary
school, to be
illegal hiring.
 retail of an intoxicating liquor is authorised by a licence (a)
 (whether the licence be for consumption on or off the
 premises); or

(b) Any premises where any intoxicating liquor is sold,
 or is supplied (b) to members of a club, society, or association
 other than a permanent political club; (c) or

(c) Any premises whereon refreshment of any kind, (d)
 whether food or drink, is ordinarily sold for consumption on
 the premises; or

(d) The premises of any public elementary school (e) in
 receipt of an annual Parliamentary grant, or any part of any
 such premises, shall not be used as a committee room (f) for
 the purpose of promoting or procuring the election of a candi-
 date at an election, and if any person hires or uses any such
 premises or any part thereof for a committee room he shall
 be guilty of illegal hiring, and the person letting such pre-
 mises or part, if he knew it was intended to use the same as a
 committee room, shall also be guilty of illegal hiring:

Provided that nothing in this section shall apply to any
 part of such premises which is ordinarily let for the purpose
 of chambers or offices, or the holding of public meetings or of
 arbitrations, if such part has a separate entrance and no direct
 communication with any part of the premises on which any
 intoxicating liquor or refreshment is sold or supplied as
 aforesaid.

This section (a) makes it an illegal hiring to

Sec. 20.

use as committee rooms (1) any licensed premises for sale of intoxicating liquors, either wholesale or retail; (2) any premises where intoxicating liquors are supplied to members of clubs other than permanent political clubs; (3) any premises whereon refreshment of any kind (food or drink) is ordinarily sold for consumption on the premises; (4) the premises of any public elementary school in receipt of an annual parliamentary grant. (b) Both the person hiring and the person letting are equally guilty; (c) but an exception is made in favour of arbitration and other public rooms, not directly communicating with refreshment bars.

For the statutory number of committee rooms, *see* Sched. 1, Part ii., *infra*, p. 305.

(a) "*A licence*," *i.e.*, whether granted by justices (as public-houses of various kinds, *licensed* grocers' premises, &c.), or by the excise authorities, as is the case with wholesale brewers and wine and spirit merchants (*cp.* note (x) to s. 38, sub-sec. 8).

(b) "*Or is supplied*," *e.g.*, for the purpose of taking away to the member's own home. Thus it was held in *Graff v. Evans* (30 W. R. 380), that the Licensing Act (35 & 36 Vic. c. 94, s. 3) does not apply to the sale of drink at a club to a member, though he is allowed under its bye-laws to take the drink away to his home.

Clubs.

(c) "*Permanent Political Club*."—A great number of the working men's clubs are established as much for political as for social purposes; and in the majority of them both food and drink is ordinarily sold for consumption on the premises. It is submitted that it would not be sufficient to prove merely

that politics constituted one of the bonds of union among the members of the club, but that it would be necessary to prove by its rules, if the name of the club did not show its political character, that one at least of its objects was political.

Sec. 20.

(d) "*Refreshment of any kind.*"—This will bring within the scope of the section all such places as coffee taverns and ordinary refreshment rooms of all sorts, as well as hotels, inns, &c.

(e) "*School.*"—Any public elementary school (whether voluntary or under a school board) is herein included, if "in receipt of an annual parliamentary grant."

(f) "*Used as a committee-room,*" i.e., not only must they not be hired, but even if lent, the use of them will be illegal. It is to be observed (1) that, while the section goes on to declare "any person hiring or using such premises guilty of illegal hiring," it does not make the person who merely *allows* them to be so used equally guilty, the words being "and the person *letting* such premises," &c. (See definition of committee-room, s. 64, p. 290.) (2) The premises herein described are only forbidden as committee-rooms. There is nothing said against their being used for public meetings of the electors, in which the candidate may address them. Although this may leave the door open to a certain amount of treating, this seems, on the whole, unavoidable, as in many districts the only large rooms available for the purpose are either public-houses or premises connected therewith. The same objection, however, does not apply to the public elementary schools, and it may be expected that they may be largely used for the

Premises
forbidden as
committee
rooms.

Secs. 20, 21. purposes of public meeting. This is not forbidden by the Act, and, in fact, a proviso permitting the use for public meetings of the premises hereby forbidden as committee-rooms, found a place in the Bill at one stage of its progress through the House of Commons. While, of course, the use of schools as committee-rooms would be highly improper (as it would, for one thing, interfere with the ordinary school work), there can be little or no objection to their use for public meetings, which take place in the evenings, when, in most cases at least, the school-rooms are lying idle. The fact of their being the property of the public, and supported by "an annual Parliamentary grant," is an additional reason in favour of their use in this respect, at least if the same argument be held to weigh in favour of their being used as polling stations. See Ballot Act, 1872, s. 6, which permits the "returning officer at a Parliamentary election to use, *free of charge*, any room in a school receiving a grant out of moneys provided by Parliament."

Punishment
of illegal
payment,
employment,
or hiring.

21. (1.) A person guilty of an offence of illegal payment, employment or hiring shall, on summary conviction, (a) be liable to a fine not exceeding one hundred pounds.

(2.) A candidate or an election agent (b) of a candidate who is personally guilty of an offence of illegal payment, employment or hiring shall be guilty of an illegal practice.

It is moreover provided by s. 36 (*infra*, p. 200), that "every person guilty of a corrupt or illegal practice, or of illegal employment, payment or hiring at an election, is prohibited from voting at such election; and if any such person votes, his vote shall be void."

(a) "*On summary conviction.*"—This may be either on prosecution before an Election Court (s. 43, s.-s. 4) or under the Summary Jurisdiction Acts (s. 54), the

offender having, in the latter case, an appeal to Quarter Sessions, but in the former being without any appeal. Secs. 21, 22.

(b) "*Election agent*" will include the sub-agent, who is his deputy (*see s. 25, s-s. 2*). For the penalties and incapacities attaching in the case of illegal practices, *see ss. 10 and 11.*

Excuse and Exception for Corrupt or Illegal Practice or Illegal Payment, Employment, or Hiring.

22. Where, upon the trial of an election petition respecting an election for a county or borough, the Election Court report that a candidate at such election has been guilty by his agents of the offence of treating and undue influence, and illegal practice, or of any of such offences, in reference to such election, and the Election Court further report that the candidate has proved to the Court—

Report exonerating candidate in certain cases of corrupt and illegal practice by agents.

- (a) That no corrupt or illegal practice was committed at such election by the candidate or his election agent, (a) and the offences mentioned in the said report were committed contrary to the orders and without the sanction or connivance of such candidate or his election agent; and
- (b) That such candidate and his election agent took all reasonable means for preventing the commission of corrupt and illegal practices at such election; and
- (c) That the offences mentioned in the said report were of a trivial, unimportant, and limited character; and
- (d) That in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and of his agents; (b)

then the election of such candidate shall not, by reason of the offences mentioned in such report, be void, nor shall the candidate be subject to any incapacity (c) under this Act.

As previously stated, the election law as to agency has been frequently characterised as being excessively harsh and stringent. So much so, that a candidate is held liable for acts done by his agents, not only without his knowledge, but even in defiance

Secs. 22, 23. of his express orders. The present section seeks to modify this extreme stringency, but, at the same time, to preserve the safeguards against the prevalence of corrupt and illegal practices. With this view it provides that, where a candidate is reported guilty *by his agents* (see notes to s. 4) of treating and undue influence and illegal practice, but is further reported to have satisfied the Court on the five points mentioned (showing that the said Acts were trivial, and committed without the knowledge and consent of the candidate or his election agent, &c.), the candidate shall be exonerated. The section, however, does not apply to bribery, personation, and the other offences which are by this Act declared to be corrupt practices (ss. 3 & 33, sub-sec. 7).

As all these requisite conditions are coupled together, and are not named disjunctively as alternatives, the exonerating report will be refused, unless it appear that each one of them has been complied with.

(a) "*Election Agent.*"—See note to last section.

(b) "*Of his Agents.*"—Any agents, not merely election agent and sub-agent; for corrupt and illegal practices avoid the election, by whomsoever committed.

(c) "*Incapacity.*"—See notes to ss. 5 & 11.

23. Where on application made, it is shown to the High Court or to an Election court by such evidence as seems to the Court sufficient—

(a) that any act or omission of a candidate at any election, or of his election agent or of any other agent or person, would, by reason of being a payment, engagement, employment, or contract in contravention of this Act, or being the payment of a sum or the incurring of expense in excess of any maximum

Power of High Court and election Court to except innocent act from being illegal practice &c.

amount allowed by this Act, or of otherwise being in contravention (a) of any of the provisions of this Act, be but for this section an illegal practice, payment, employment, or hiring; and

(b) that such act or omission arose from inadvertence or from accidental miscalculation or from some other reasonable cause (b) of a like nature, and in any case (c) did not arise from any want of good faith; and

(c) that such notice of the application has been given in the county or borough for which the election was held as to the Court seems fit;

and under the circumstances it seems to the Court to be just that the candidate and the said election and other agent and person, or any of them, should not be subject to any of the consequences under this Act of the said act or omission, the Court may make an order allowing such act or omission to be an exception from the provisions of this Act which would otherwise make the same an illegal practice, payment, employment, or hiring, and thereupon such candidate, agent, or person shall not be subject to any of the consequences under this Act of the said act or omission.

Section 23 gives power to the High Court or the Election Court to except from punishment as an illegal practice, payment, employment or hiring, any act or omission which would otherwise be punishable as such. Application may for this purpose be made to the High Court or Election Court by a candidate, or election or any other agent, or person, who will, upon the application being granted, be relieved of any of the consequences of such act or omission. But satisfactory evidence must be adduced to prove (1) the nature of the act or omission in question; (2) that it arose from inadvertence, accidental miscalculation, or from some similar and reasonable cause, and *in any case not from any want of good faith*; and (3) that proper notice of the application has been given in the county or borough in question.

Sec. 23.

— (a) "*Or of otherwise being in contravention, &c.*"—

This section applies only to illegal practices, payment, employment or hiring, and not to *corrupt practices*. Therefore the words "any of the provisions," &c., must be taken to be limited to the sections dealing with the offences mentioned immediately before. The "payment of a sum or the incurring of expenses in excess of any maximum amount, &c.," are declared by the following sections to be illegal practices.

(b) "*Some other reasonable cause,*" e. g., where a joint candidature by ceasing before the poll, or beginning after the commencement of the candidature, has *bonâ fide* caused the maximum scale to be exceeded (Sched. 1, Part v. ss. 4).

(c) "*In any case,*" i. e., that there was an entire absence of *mala fides* not only in the candidate, or other applicant, but also in the person or persons directly offending. Where the candidate becomes liable in respect of any contravention of s. 29 by his election agent, he may also obtain relief (*see* s. 29, sub-sec. 6).

The benefit of this section is extended to *any person*, and not merely to candidates and their agents.

An order under this section cannot be made by a master. It must come before one of the election Judges; although it is not necessary that two Judges should sit together for the purpose, as is the case in the hearing of a petition (*see* s. 56).

Such an application will, it is presumed, take the form of an interlocutory application in the course of the hearing of the election petition, as after the

Judges have reported to the Speaker, it would be too late. Secs. 23, 24.

Election Expenses.

24. (1.) On or before the day of nomination at an election, a person shall be named (a) by or on behalf of each candidate (b) as his agent for such election (in this Act referred to as the election agent). Nomination of election agent.

The provisions relating to election expenses in this and the following sections replace the enactments of the 26 Vic. c. 29, which (with the exception of s. 6) are repealed by this Act. Under this section (1) each candidate must have one election agent, and no more (Sched. 1, Part i.), whose name and address must (2) be declared in writing to the returning officer, and by him be published; (3) a candidate may name himself as election agent, in which case he becomes subject to the provisions of the Act in both capacities; and (4) in case of death or revocation of such appointment, another election agent is to be forthwith appointed in the same way.

(a) "*A person shall be named.*"—This provision is imperative. No penalty, indeed, is imposed for not appointing an election agent. But under ss. 27 & 28 all appointments must be made and all expenses paid through him, and failure to comply with the latter section is an illegal practice avoiding the election. As the Act does not say that the election will be void if such an agent is not appointed, the returning officer cannot, of course, disqualify a candidate for omitting to do so (*Mayo*, 2 O. & H. 191). Nor need the agent's name be declared to the returning officer, or by him be publicly notified *at the time of election* (i.e., during the two hours fixed for receiving the nominations of candidates). It is sufficient, if When election agent to be appointed.

Sec. 24.

the agent be named "on or before the day of nomination," i.e., according to the usual rule of interpretation as to the legal duration of a day, up to 12 o'clock, midnight, and the public notice is to be forthwith given, i.e., without any unnecessary delay, though not of necessity, immediately on the receipt of the nomination, as notice bills, &c., might have to be printed. (See as to public notices by returning officer, Ballot Act, 1872, Rule 46; and s. 62 (1) of Act of 1883). It is obvious that the sooner after the commencement of the candidature an election agent is appointed the better; for as all the recognised legal appointments, contracts, &c., have to be made by him, unless the candidate is his own agent, the practical work of the campaign could not be said to commence until the election agent had been duly appointed.

Employment of
corrupt agent.

The employing of an agent who has been, within seven years previously, disqualified for corrupt practices, is forbidden by the following s. 44 of the P. E. Act, 1868:—

P. E. Act, 1868,
s. 44.

"If on the trial of any election petition under this Act, any candidate is proved to have personally engaged* at the election to which such petition relates, as a canvasser† or agent for the manage-

* "*Personally engaged*" does not mean that the candidate himself by word of mouth or his own hand engaged the agent, but only that "it must be brought home to his personal knowledge" (*N. Norfolk*, 1 O. & H. 238; *Norwich*, 2 ib. 41), and the agency must be clearly proved (*Galway*, 2 O. & H. 197).

† "*Canvasser*."—There is no express prohibition in the new Act against the employment of persons as canvassers. But they are not named in Sched. 1, which describes the various persons who may be legally employed for payment, as election agents, sub-agents, polling agents, clerks, and messengers. There is, it would seem, nothing to prevent any of these from acting as canvassers. But it would be illegal to hire any additional persons in the latter capacity. Volunteer canvassers, however, are not interfered with, so long as they do nothing contrary to the Act.

“ment of the election, any person knowing that such
 “person has within seven years previous to such
 “engagement been found guilty of any such corrupt
 “practice by any competent legal tribunal, or been
 “reported guilty of any corrupt practice by a com-
 “mittee of the House of Commons, or by the report
 “of the Judge upon an election petition under this
 “Act, or by the report of commissioners appointed
 “in pursuance of the Act of the session of the 15th
 “and 16th years of the reign of Her present Majesty,
 “chap. 57, the election of such candidate shall be
 “void.”

Sec. 24.
 —

(b) “*On behalf of each candidate,*” as in the case of the candidate being elected in his absence or being put up without his consent (s. 63).

(2.) A candidate may name himself as election agent, and thereupon shall, so far as circumstances admit, be subject to the provisions of this Act both as a candidate and as an election agent, and any reference in this Act to an election agent shall be construed to refer to the candidate acting in his capacity of election agent.

Candidate his
 own election
 agent.

Previously this was not permissible, the 26 & 27 Vic. c. 29 having enacted (s. 2) that no payment (except personal expenses) should be paid by or on behalf of any candidate, otherwise than through an agent, &c. And so where, although an expenses agent was duly appointed, his appointment was merely nominal, he himself being unaware of it till after the election, and the candidate making all payments by his own cheques, it was held that, having thus taken the entire expenditure upon himself, the candidate was liable for the bribery committed, as being done with his knowledge and consent (*Cashel*, 1 O. & H. 288).

Sec. 24.
—

(3.) On or before the day of nomination the name and address of the election agent of each candidate shall be declared in writing by the candidate or some other person on his behalf to the returning officer, (c) and the returning officer shall forthwith give public notice (d) of the name and address (e) of every election agent so declared.

(c) *Returning Officer*.—By 30 & 31 Vic. c. 102, s. 50, “No Returning Officer for any county or borough, nor his deputy, nor any partner or clerk of either of them, shall act as agent for any candidate in the management or conduct of his election.” If he do so, it is a misdemeanour. And this section is extended by s. 11 of the Ballot Act (35 & 36 Vic. c. 33) to “any Returning Officer, or officer appointed by him in pursuance of this Act, and to his partner or clerk,” *i.e.*, to deputy returning officers, presiding officers, poll clerks and check clerks. Also, under Rule 49 of the same Act, “No person shall be appointed by a Returning Officer for the purposes of an election who has been employed by any other person in or about the election.” *

(d) “*Public Notice*.”—Under the Ballot Act, Rule 46, “where the Returning Officer is required or authorised by that Act to give any public notice, he shall carry such requirements into effect, by advertisements, placards, handbills, or such other means as he thinks best calculated to afford information to the electors” (*cp.* s. 62, sub-sec. 1).

(e) “*Name and Address*,” *i.e.*, the private or residential address of the person so named. By s. 26(1), each election agent and sub-agent is to have within

* By s. 38 of the C. P. Act, 1854 (unrepealed), the words “Returning Officer” shall apply to any person or persons to whom, by virtue of his or their office, under any law, custom, or statute, the execution of any writ or precept doth or shall belong for the election of a member or members to serve in Parliament, by whatever name or title such person or persons may be called.

his district an office, the address of which is to be declared and published at the same time as his appointment. Secs. 24, 25.

(4.) One election agent only (*f*) shall be appointed for each candidate, but the appointment, whether the election agent appointed be the candidate himself or not, may be revoked, and in the event of such revocation or his death, whether such event is before, during, or after the election, then forthwith another election agent shall be appointed, and his name and address declared in writing to the returning officer, who shall forthwith give public notice of the same.

(*f*) "*One Election Agent only*," and he, if an elector, may not vote. Sched. 1, Part i. (7). See next section as to appointment of sub-agents. See also s. 17.

25. (1.) In the case of the elections specified in that behalf in the first schedule (*a*) to this Act an election agent of a candidate may appoint the number of deputies therein mentioned (which deputies are in this Act, referred to as sub-agents), to act within different polling districts. (*b*)

Nomination of deputy election agent as sub-agent.

This section provides for—(1) The appointment by the election agent, in certain cases, of the statutory number of sub-agents; (2) The power of such sub-agents within their respective districts to act for the election agent, their liability to punishment, and the responsibility of the candidate for their conduct; (3) The publication by the returning officer of the names and addresses of such sub-agents, in the same way as that of the election agent; (4) The appointment of other sub-agents in the event of revocation or death.

(*a*) "*The First Schedule*," i.e., in counties, one sub-agent to act within each polling district, and no more. No sub-agents are allowed in boroughs, with the exception of the five agricultural constituencies mentioned in Sched. 1, Part i. (8). The same schedule

Sec. 25. prohibits sub-agents from voting, though they may be electors.

The sub-agents are distinct officials from the polling agents, clerks, &c., as to whom *see* s. 27, ss. 1.

(b) "*Polling Districts.*"—*See* s. 47 as to division of counties and boroughs into polling districts. By the next sub-sec. the deputed authority of the sub-agent is strictly limited to matters in his respective polling district (as to which *see* ss. 27 & 28), and would, therefore, not include making the return and declaration respecting election expenses under s. 33.

(2.) As regards matters in a polling district the election agent may act by the sub-agent for that district, and anything done for the purposes of this Act by or to (c) the sub-agent in his district shall be deemed to be done by or to the election agent, and any act or default of a sub-agent which, if he were the election agent, would be an illegal practice (d) or other offence against this Act, shall be an illegal practice and offence against this Act committed by the sub-agent, and the sub-agent shall be liable to punishment accordingly; and the candidate shall suffer (e) the like incapacity as if the said act or default had been the act or default of the election agent.

(c) "*Or to,*" *e.g.*, serving on him claims, notices, writs, &c.

(d) "*Illegal Practice, &c.*"—*See* ss. 10, 21, 29, &c.

(e) "*The Candidate shall suffer.*"—But the candidate may be exonerated, under s. 22, from the effects of corrupt and illegal practices by his agents; or under s. 23, on application to have such act or omission allowed as a statutory exception. Also in case of infringements against s. 29 by his election agent, which, *semble*, includes the sub-agents, the candidate may be relieved from the effects of such act (sub-sec. 6).

In the out-lying polling districts of a large county

constituency, it might be almost impossible to maintain the necessary supervision and control over the sub-agents and even a slight omission or act on their part, due perhaps to the excitement of the contest, might be fatal to the election. It is therefore suggested that, in the office of every election agent and sub-agent, there should be conspicuously hung up a code of rules for their guidance. A draft of such a code, which it is hoped may be found useful, is given at p. 433.

Sec. 25.
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(3.) One clear day before (*f*) the polling the election agent shall declare in writing the name and address of every sub-agent to the returning officer, and the returning officer shall forthwith give public notice of the name and address of every sub-agent so declared.

(*f*) "*One clear day before*," i.e., if the polling be fixed for a Thursday, the notice must be given on the preceding Tuesday.

(4.) The appointment of a sub-agent shall not be vacated (*g*) by the election agent who appointed him ceasing to be an election agent, but may be revoked by the election agent for the time being of the candidate, and in the event of such revocation or of the death of a sub-agent, another sub-agent may be appointed, and his name and address shall be forthwith declared in writing to the returning officer, who shall forthwith give public notice of the same.

(*g*) "*Shall not be vacated*," i.e., if the election agent dies, or his appointment be revoked, the sub-agents will be able to go on with their work, and no re-appointment will be necessary by the new election agent. The office of election agent cannot be finally vacated until all the business connected with the election is over (*see s. 33*). But there appears to be no reason why the duties of the sub-agents should not come to an end with the closing of the poll. And

Secs. 25, 26. their continuance would be likely not only to expose the candidate to danger from anything they might do after the election, but would also of course be a considerable additional expense. In any case, whenever it may be intended that their duties should cease, a distinct revocation, either by the election agent or the candidate himself, would be necessary, of which notice should perhaps be given to the returning officer.

Office of
election agent
and sub-agent.

26. (1.) An election agent at an election for a county or borough shall have within the county or borough, (a) or within any county of a city or town (b) adjoining thereto, and a sub-agent shall have within his district, or within any county of a city or town adjoining thereto, an office or place to which all claims, notices, writs, summons and documents may be sent, and the address of such office or place shall be declared at the same time as the appointment of the said agent to the returning officer, and shall be stated in the public notice of the name of the agent.

(2.) Any claim, notice, writ, summons or document delivered at such office or place, and addressed to the election agent or sub-agent, as the case may be, shall be deemed to have been served on him, and every such agent may, in respect of any matter connected with the election in which he is acting, be sued in any Court having jurisdiction (c) in the county or borough in which the said office or place is situate.

(a) "*Within the county or borough.*"—"Borough" includes university. Where, as in Scotland, a university constituency consists of more than one university, it is submitted that, although only one election agent may be appointed, he will be able to have an office in each of the universities, and also elsewhere if necessary. Sub-agents are only permitted in the counties (Sched. 1, Part i.). The same remark applies to the English universities, the electors for which are so scattered that it is usual

to have committees sitting, not only at Oxford and Cambridge, but also in London. SECS. 26, 27.

(b) "*County of a city or town*," i.e., places like Southampton and Bristol, which rank both as towns and counties. "City or borough" is defined by s. 38 of the C. P. Act, 1854 (which is still in force), to include as well "county of a city, or of a town."

(c) "*Any Court having jurisdiction*," e.g., either a County Court or the High Court (cp. s. 29, sub-sec. 8).

27. (1.) The election agent (a) of a candidate by himself or by his sub-agent shall appoint every polling agent, (b) clerk, and messenger (c) employed for payment on behalf of the candidate at an election, and hire every committee room (d) hired on behalf of the candidate. Making of contracts through election agent.

All appointments of paid agents, all hiring of committee rooms, and all contracts entailing any election expenses, are to be made by the candidate (if he is his own election agent), or his election agent or his sub-agent.

(a) "*Election Agent*," that is, the candidate himself, if he has named himself as election agent; if he has not done so, it is clearly impossible to conduct the election without a duly appointed election agent.

(b) "*Polling Agent*."—One polling agent in each polling station, and no more, is now allowed (Sched. 1, Part i.). Polling agent, or personation agent (6 Vic. c. 18, s. 85) means an agent of the candidate appointed to attend at a polling station in pursuance of the Ballot Act, 1872, or of the Acts therein referred to (see s. 64 and note, p. 289).

Misconduct on the part of polling agents, by attempting to violate the secrecy established by the Ballot Act, will not affect the seat of the sitting

Sec. 27. — member whose agents they were (*Bolton*, 2 O. & H. 141); but such misconduct renders them liable to six months' imprisonment, with or without hard labour (Ballot Act, s. 4). And if the candidate is present and offends in a like manner, he is liable to the same penalty, and may be removed from the polling station by the presiding officer under s. 9 (*Clementson v. Mason*, L. R. 10 C. P. 213, 214). But to warrant a conviction, it must be proved that information as to the voting given was actually communicated to another person, not merely that the means of acquiring such information were afforded (*Stannanought v. Hazeldine*, 4 C. P. D. 191); but it is not necessary to prove how the voter voted, and the confession of the defendant is sufficient to convict him on (*R. v. Unkles*, I. R. 8 C. L. 58, per Barry, Fitzgerald and O'Brien, J.J., diss. Whiteside, C.-J.).

Under Rule 51 of the Ballot Act, "a candidate may himself undertake the duties, which any agent of his, if appointed, might have undertaken, or may assist his agent in the performance of such duties and may be present at any place at which his agent may, in pursuance of this Act, attend." And under this rule, he may be present at a polling station, without alleging that he is there to assist, or as a substitute for, his agent (*Clementson v. Mason*, L. R. 10 C. P. 213).

Rule 31 of the Ballot Act provides that "the candidates may respectively appoint agents to attend the counting of the votes," whose names and addresses must be "transmitted to the returning officer one clear day at the least before the opening

of the poll, otherwise the returning officer may refuse to admit them to the place where the votes are counted.”

Sec. 27.
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Agents for this purpose are distinct from the polling agents (*Clementson v. Mason*, L. R. 10 C. P. 212), but they are not mentioned by the new Act. It appears, therefore, that no such agents can be appointed *for payment in addition to* the election and polling agents permitted under the 1st Schedule.

(c) “*Clerk and Messenger.*”—See Sched. 1, Part i., and notes, and s. 17.

(d) “*Committee Room.*”—See notes to ss. 7 (1), 20, and Sched. 1, Part i.

(2.) A contract whereby any expenses are incurred (e) on account of or in respect of the conduct or management of an election shall not be enforceable against a candidate at such election unless made by the candidate himself or by his election agent, either by himself or by his sub-agent; provided that the inability under this section to enforce such contract against the candidate shall not relieve the candidate from the consequences of any corrupt or illegal practice having been committed by his agent.

(e) “*A contract whereby any expenses are incurred.*”—Under the old law claims might be *incurred* through other agents, but could only be *paid* through the expense agent (*Grant v. Guinness*, 17 C. B. 190). But under this sub-sec., “a contract whereby any election expenses are *incurred* shall not be enforceable against the *candidate*, unless made by himself, his election agent, or sub-agent.” Therefore any such contract will be void as against the candidate, although not, it would seem, against the person so making it if it were made by some person other than the candidate or his election agent. Moreover, under the next section (28), any payment, by

Secs. 27, 28. any agent, or by any other person, at any time before, during, or after the election, otherwise than through the election agent or his sub-agent, is an illegal practice, and by this section it is expressly provided that "the inability to enforce a contract against a candidate shall not relieve the candidate from the consequence of any corrupt or illegal practice having been committed by his agent." Whence it follows, that if an agent (other than the election or sub-agent) is sued on any such contract as above, and on judgment ordered to pay, and does pay, he thereby becomes guilty of an illegal practice, for the consequences of which the candidate is liable (*cp.* note (*g*) to s. 29, sub-sec. 8).

Payment of
expenses
through elec-
tion agent.

28. (1.) Except as permitted (*a*) by or in pursuance of this Act, no payment and no advance or deposit shall be made by a candidate at an election or by any agent (*b*) on behalf of the candidate or by any other person (*c*) at any time, whether before, during, or after (*d*) such election, in respect of any expenses incurred on account of or in respect of the conduct or management of such election, otherwise than by or through the election agent of the candidate, whether acting in person or by a sub-agent (*e*); and all money provided by any person other than the candidate for any expenses incurred on account of or in respect of the conduct or management of the election, whether as gift, loan, advance, or deposit, shall be paid (*f*) to the candidate or his election agent and not otherwise;

Provided that this section shall not be deemed to apply to a tender of security (*g*) to or any payment by the returning officer, (*h*) or to any sum (*i*) disbursed by any person out of his own money for any small expense legally incurred by himself, if such sum is not repaid to him.

(2.) A person who makes any payment, advance, or deposit in contravention of this section, or pays in contravention of this section any money so provided as aforesaid, shall be guilty of an illegal practice.

Under this section all election expenses are to pass through the hands of the election agent, or his sub-

agent (unless the candidate is his own agent (s. 21, sub-sec. 2), whether in the form of (i.) any payment, advance, or deposit by the candidate, or by any agent of his, or by any other person; or (ii.) any money provided either as gift or otherwise by any person other than the candidate. But the section does not affect a tender of security to, or payments by, the returning officer, nor yet small legal out-of-pocket expenses by any one, if not repaid to him. Any contravention of this section is an illegal practice.

(a) "*Except as permitted*," i.e., personal expenses of candidate not exceeding £100, and small committee room expenses, which the election agent may, by writing, authorise any other person to pay (*see* s. 31).

(b) "*By any agent*."—*See* note (e) to last section.

(c) "*Person*" includes associations (*see* s. 64).

(d) "*Before, during, or after*."—*See* notes on s. 8, *supra*, p. 94.

(e) "*Whether acting in person or by a sub-agent*."—
 Any payment therefore by any other person, e.g., polling agent, clerk, or messenger, will be illegal. The case of *Re H. W. Parker*, 21 Ch. D. 408, decided under the 26 & 27 Vic. c. 29 (now repealed), will still be an authority on this point. In that case, a sub-agent at an election employed canvassers, and paid them out of his own moneys. These items having been subsequently disallowed, he sued the candidate to recover them. But it was held by the Court of Appeal that the words of the Act were express, to the effect that no payment (except personal expenses) could be made, otherwise than through the formally appointed expenses agent or agents, that if any such payments were made by a

Expenses to be paid by election agent only.

Sec. 28. sub-agent, they were illegal, and no authority to make them could be implied. Under that Act no sub-agents, in the sense of the term used in the present Act, were required. Under the present section any payments made otherwise than through the election agent or his duly appointed sub-agent, are as much forbidden as under the earlier Act. See further note (e) to last section.

(f) "*Shall be paid*," &c.—If the candidate is his own election agent, the money would necessarily have to be paid to him. If not, it might be paid either to himself or his agent; but if to himself, he would be required to hand it over to his election agent; otherwise he would be guilty of an illegal practice, and, in the event of corruption, would be held personally liable for the same (*Cashel*, 1 O. & H. 288); and in the *Bewdley* case (1 O. & H. 21) it was held, that if a fund is placed in the hands of an agent by a candidate, and it is shown that the agent expended it in corrupt practices afterwards, it is evidence tending to show that the candidate so paying was himself intending, that it should be so spent.

Returning
officer's
charges.

(g) "*Tender of security*." — The expenses and charges of a returning officer are now fixed by the Parliamentary Elections (Returning Officers) Act, 1875 (38 & 39 Vic. c. 84), s. 3 of which provides for the apportionment of the security required to be given between the several candidates who are nominated for election. The same section further provides as follows:—

"(4.) A tender of security in respect of a candidate may be made by any person.

“(5.) Security may be given by deposit of any Secs. 28, 29.
 “legal tender, or of notes of any bank being
 “commonly current in the county or borough for
 “which the election is held, or, with the consent of
 “the returning officer, in any other manner.

“(6.) The balance (if any) of a deposit, beyond
 “the amount to which the returning officer is
 “entitled in respect of any candidate, shall be
 “repaid to the person or persons by whom the
 “deposit was made.”

(h) “*Payment by Returning Officer.*”—This would include disbursements by him in connection with the erection of polling booths, &c., as enumerated in the schedule to the 38 & 39 Vic. c. 84, of which he is required (s. 4) to send in a detailed account to the candidate’s election agent within 21 days after the return made of the election (*cp.* s. 32, s.-s. 2 below).

(i) “*Or to any sum.*”—It is necessary to observe carefully the conditions requisite to exclude a payment from the operation of this section.

The expense must be (1) small; (2) legally incurred; (3) by the party himself; (4) paid out of the person’s own money; and (5) it must not be repaid to him.

29. (1.) Every payment made by an election agent, whether by himself or a sub-agent, in respect of any expenses incurred on account of or in respect of the conduct or management of an election, shall, except where less than forty shillings, be vouched for by a bill stating the particulars and by a receipt.

Period for sending in claims and making payments for election expenses.

This section contains regulations as to the period within which claims may be sent in, and payments for the same allowed:—

1. Vouchers and receipts are required for all sums “except where less than forty shillings” (sub-sec. 1).

Sec. 29.

2. All claims must be sent in within 14 days of the candidate being declared elected, otherwise they are barred, and shall not be paid, and an election agent paying them commits an illegal practice (sub-secs. 2, 3).
3. The election agent (*i.e.*, the candidate, if he is his own election agent) must pay claims within 28 days from the same date, under pain of committing an illegal practice (sub-secs. 4, 5).
4. A disputed claim is one which, having been sent in within the statutory period, the election agent either disputes, refuses or fails to pay within the proper time. An action for the same may be brought in any competent Court (sub-secs. 7, 8).
5. The High Court has power, on application by the claimant, the candidate, or his election agent, to allow claims and payments, even when not made in conformity with the above provisions (sub-secs. 8-10).
6. The election Court has power to grant relief to a candidate on proof that his election agent has contravened this section without his sanction or connivance (sub-sec. 6).

(2.) Every claim (*a*) against a candidate at an election or his election agent in respect of any expenses incurred on account of or in respect of the conduct or management (*b*) of such election, which is not sent in to the election agent within the time limited by this Act, shall be barred and shall not be

paid; and subject to such exception as may be allowed (c) in pursuance of this Act, an election agent who pays a claim in contravention of this enactment shall be guilty of an illegal practice.

Sec. 29.
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(a) "*Every claim.*"—This sub-sec. will not, however, include the returning officer's charges, who has, by the 38 & 39 Vic. c. 84, s. 4, 21 days within which to forward his account (*see* s. 32, sub-sec. 2).

But the section applies, "so far as circumstances admit," to the election agent's fees. It appears, therefore, not to be imperative that he should send his own claim in, or, in other words, give notice of it to the candidate, within the 14 days; for, as his own duties will not be at an end till after all disputed claims, &c., have been settled, he might be unable within that period to fix the exact amount of his remuneration; unless, indeed, he had agreed with the candidate, on his appointment, to conduct the whole business of the election for a fixed remuneration (*cp.* s. 32, s.-s. 1).

(b) "*Conduct or management.*"—*See* note (c), s. 8.

(c) "*Such exception as may be allowed,*" &c., *i.e.*, either under s. 23, or by virtue of sub-sec. 8 of the present section.

(3.) Except as by this Act permitted, the time limited by this Act for sending in claims shall be fourteen days after (d) the day on which the candidates returned are declared elected.

(d) "*Fourteen days after.*"—For the purposes of this section, in reckoning time, Sundays and holidays are to be included, and not, as in s. 40, deducted from the period named.

(4.) All expenses incurred by or on behalf of a candidate at an election, which are incurred on account of or in respect of the conduct or management of such election, shall be paid within the time limited by this Act and not otherwise; and,

Sec. 29.

— subject to such exception as may be allowed in pursuance of this Act, an election agent who makes a payment in contravention of this provision shall be guilty of an illegal practice.

(5.) Except as by this Act permitted, the time limited by this Act for the payment of such expenses as aforesaid shall be twenty-eight days after the day on which the candidates returned are declared elected.

(6.) Where the election Court reports that it has been proved to such Court by a candidate that any payment made by an election agent in contravention of this section was made without the sanction or connivance of such candidate, the election of such candidate shall not be void, (e) nor shall he be subject to any incapacity under this Act by reason only of such payment having been made in contravention of this section.

(e) "*The election shall not be void.*"—But although the seat would thus be saved, the respondent would, in all probability, have to pay the costs of the petition, or, at any rate, his own, on the ground that there was good *prima facie* cause for the petition.

(7.) If the election agent in the case of any claim sent in to him within the time limited by this Act disputes it, or refuses or fails to pay it within the said period of twenty-eight days, such claim shall be deemed to be a disputed claim.

(8.) The claimant may, if he thinks fit, bring an action for a disputed claim in any competent Court (f); and any sum paid by the candidate or his agent in pursuance of the judgment or order of such Court shall be deemed to be paid within the time limited by this Act, and to be an exception (g) from the provisions of this Act, requiring claims to be paid by the election agent.

(f) "*In any competent Court.*"—This may be a County Court, if the sum claimed be within its jurisdiction, otherwise the High Court. Similarly, an election agent or sub-agent may be sued in "any Court having jurisdiction in the county or borough in which his office is" (s. 26, sub-sec. 2).

(g) "*An exception,*" &c., and as such, it will not be accounted an illegal practice, so as to avoid the election and incapacitate the candidate (sub-

secs. 2, 4). The exception may also be authorised under s. 23. But, on the other hand, supposing the amount ordered to be paid is in excess of the legal maximum, it will be an illegal practice, and as such will avoid the seat (*cp.* ss. 13 & 21, and *see* note (e) to s. 27, sub-sec. 2). Secs. 29-31.

(9.) On cause shown to the satisfaction of the High Court, (h) such Court on application by the claimant or by the candidate or his election agent may, by order, give leave for the payment by a candidate or his election agent of a disputed claim, or of a claim for any such expenses as aforesaid, although sent in after the time in this section mentioned for sending in claims, or although the same was sent in to the candidate and not to the election agent.

(10.) Any sum specified in the order of leave may be paid by the candidate or his election agent, and when paid in pursuance of such leave shall be deemed to be paid within the time limited by this Act.

(h) "*The High Court.*"—This will be by a summons before the Master, under s. 56 (1), which, in the case of a claimant making the application, will be served on the candidate or his election agent, and should be supported by an affidavit in the usual way.

30. If any action is brought in any competent court (a) to recover a disputed claim against a candidate at an election, or his election agent, in respect of any expenses incurred on account or in respect of the conduct or management of such election, and the defendant admits his liability, but disputes the amount of the claim, the said amount shall, unless the Court, on the application of the plaintiff in the action, otherwise directs, be forthwith referred for taxation to the master, official referee, registrar, or other proper officer of the Court, and the amount found due on such taxation shall be the amount to be recovered in such action in respect of such claim. Reference to taxation of claim against candidates.

(a.) "*Any competent Court.*"—*See* note (f) to last section (*cp.* s. 56, 1).

31. (1.) The candidate at an election may pay any personal expenses (a) incurred by him on account of or in connection with or incidental to such election to an amount not exceeding Personal expenses of candidate and petty expenses.

Sec. 31.

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one hundred pounds, but any further personal expenses so incurred by him shall be paid by his election agent.

(2.) The candidate shall send to the election agent within the time limited by this Act for sending in claims a written statement of the amount of personal expenses paid as aforesaid by such candidate.

(3.) Any person may, if so authorised in writing by the election agent of the candidate, pay any necessary expenses for stationery, postage, telegrams, and other petty expenses, to a total amount not exceeding that named in the authority, but any excess above the total amount so named shall be paid by the election agent.

(4.) A statement of the particulars of payments made by any person so authorised shall be sent to the election agent within the time limited by this Act for the sending in of claims, and shall be vouched for by a bill containing the receipt of that person.

Under this section, (1) a candidate is himself permitted to pay personal expenses not exceeding £100; and (2) any person may, by a written authority of the election agent, pay small committee room expenses, limited to the sum named in the authority, which must be accounted for in the same way as is provided by s. 26.

Candidate's
personal
expenses.

(a) "*Personal Expenses*."—These are defined by s. 64, to be "the reasonable travelling expenses of the candidate, and the reasonable expenses of his living at hotels or elsewhere for the purposes of and in relation to such election." Probably the interpretation to be given to the term *reasonable* will depend upon the circumstances of each case. It would doubtless include the expenses incident to the presence of his wife, and even of some of his family, if he be married, and perhaps also include the reasonable entertainment of some of his friends, though to what extent it would be impossible to lay down;

but it would hardly include the travelling expenses of such friends. A statement of the amount of such personal expenses, if any, has to be transmitted to the returning officer, but not the several items contained therein (s. 33). Sec. 31.
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The purport of the provision contained in sub-sec. 1 is apparently to meet the practical difficulty which would arise from a candidate being compelled to pay every item of personal expenses through his election agent. But beyond that, it will have little or no effect so far as the validity or otherwise of the election is concerned. The candidate's "personal expenses" are not absolutely limited to £100—he is only forbidden to *pay* a larger sum except through his agent. But the fact of any excess over the sum of £100 having to be paid by the election agent does not bring such excess within the provisions as to the maximum scale in Sched. 1, Part iv. Thus, supposing the personal expenses to amount to £150, the candidate may only pay £100, and the remaining £50 must pass through the hands of his election agent. But this sum is not to be added to the legal expenses paid by him, so as to cause them perhaps to exceed the maximum scale; for it is expressly declared that the personal expenses are to be both legal and outside the maximum (Sched. 1, Parts ii. & iv.). Moreover, the candidate is required to furnish his election agent with a written statement only of the amount of his personal expenses, not with all the items (sub-sec. 2). Hence there seems to be nothing to prevent a candidate, if he were so minded, from practising a considerable amount of bribery and treating under the cover of personal expenses, so long as they came

Effect of provisions as to personal expenses.

Secs. 31, 32. within the somewhat vague description of "*reasonable travelling and hotel expenses*." Nor is it clear how the question of what constitutes *reasonable expenses* in this connection is to be settled, for it is nowhere stated that an election petition can be based on a charge of having paid personal expenses to an unreasonable amount. And unless evidence were forthcoming to support a charge of treating, it does not appear that the question could be brought under the cognisance of the Election Court or the High Court. It is true that, if he pays more than the £100 himself, he is guilty of an illegal practice; but it is not provided that the election agent shall be bound to inquire into the reasonableness of the candidate's personal expenses, when asked to pay anything on that account, nor that, if he do pay an unreasonable amount on that behalf, he shall himself be guilty of any offence. Therefore it seems that the only check relied upon to prevent treating under the cover of personal expenses is the necessity of paying anything over £100 through the election agent, and the fear of detection in treating, &c.

Remuneration
of election
agent and
returning
officer's
expenses.

32. (1.) So far as circumstances admit, (a) this Act shall apply to a claim for his remuneration by an election agent and to the payment thereof in like manner as if he were any other creditor, and if any difference arises respecting the amount of such claim the claim shall be a disputed claim within the meaning of this Act, and be dealt with accordingly.

(a) "*So far as circumstances admit.*"—Inasmuch as the election agent's duties cannot be concluded until all the claims of the various creditors have been settled, and the amount of his remuneration may depend to some extent on the length of time that that settlement may take, the limit of time laid

down in s. 29 cannot always apply to him. The limit, in fact, in the case of the election agent, will usually be the 35 days mentioned in the next section (33). The clause does not say that the fact of the agent's claim not being notified to the candidate within the prescribed 14 days shall make it a disputed claim, but only that "if any difference arises as to the amount" it shall be dealt with as such.

Sec. 32.

(2.) The account of the charges claimed by the returning officer in the case of a candidate and transmitted in pursuance of s. 4 of the Parliamentary Elections (b) (Returning Officers) 38 & 39 Vic. Act, 1875, shall be transmitted within the time specified in the said section to the election agent of the candidate, and need not be transmitted to the candidate. c. 84.

(b) "*Section 4 of the Parliamentary Elections,*" &c.—Returning officer's charges.
This section runs as follows: "Within twenty-one
"days after the day on which the return is made of
"the persons elected at the election, the returning
"officer shall transmit to every [candidate or other]
"person from whom he claims payment either out of any
"deposit or otherwise of any charges in respect of the
"election, or to the agent for election expenses of any
"such candidate, a detailed account showing the
"amounts of all the charges claimed by the return-
"ing officer in respect of the election, and the share
"thereof which he claims from the person to whom
"the account is transmitted. He shall annex to the
"account a notice of the place where the vouchers
"relating to the account may be seen, and he shall at
"all reasonable times, and without charge, allow the
"person from whom payment is claimed, or any agent
"of such person, to inspect and take copies of the
"vouchers. He shall not be entitled to any charges
"which are not duly included in his account. And

Sec. 32. — “ nothing in this section shall apply to the charge of
 “ the returning officer for publication of accounts of
 “ election expenses.” His charge for such publica-
 tion is provided for by s. 35 (1) of Act, 1883.

The effect of the present section upon the above is practically to repeal the words “ candidate or other.” The returning officer is now *required* to send his charges to the election agent, but he *need* not send them to the candidate. The Bill in Committee contained after “ candidate ” the additional words “ or other person in the said section mentioned.” These latter words were afterwards dropped out, with the effect, it is submitted, of still requiring the returning officer to transmit his charges to the election agent *and every other person* mentioned in s. 4 of the 1875 Act, but leaving it optional for him to send them to the candidate himself ; unless, of course, the latter is his own election agent.

Acts relating
 to, do not affect
 Universities.

Nothing in the above Act (38 & 39 Vic. c. 84) “ shall apply to an election for any University or combination of Universities ” (s. 8). In the Universities of Oxford, Cambridge and London, the Vice-Chancellors are the returning officers (16 & 17 Vic. c. 68, and 30 & 31 Vic. c. 102 s. 41). And nothing in the Ballot Act “ except Part III. (dealing with personation) shall apply to any election for a University or combination of Universities.” Further, by s. 68 (11) of Act, 1883, any reference to the Returning Officers’ Act, 1875, shall not apply to Scotland. With respect to election expenses generally in University elections, there appear to be no provisions laid down by Act of Parliament, except in the case of Scotch Universities, which are regulated by

s. 40 of the Representation of the People (Scotland) Acts, 1868 (31 & 32 Vic. c. 48). Secs. 32, 33.

33. (1.) Within thirty-five days after the day on which the candidates returned at an election are declared elected, (a) the election agent (b) of every candidate at that election shall transmit to the returning officer a true return (c) (in this Act referred to as a return respecting election expenses), in the form set forth in the second schedule to this Act or to the like effect, containing, as respects that candidate,—

Return and declaration respecting election expenses.

- (a) A statement of all payments made by the election agent, together with all the bills and receipts (which bills and receipts are in this Act included in the expression "return respecting election expenses");
- (b) A statement of the amount of personal expenses, (d) if any, paid by the candidate;
- (c) A statement of the sums paid to the returning officer for his charges, (e) or, if the amount is in dispute, of the sum claimed and the amount disputed;
- (d) A statement of all other disputed claims (f) of which the election agent is aware;
- (e) A statement of all the unpaid claims, (g) if any, of which the election agent is aware, in respect of which application has been or is about to be made to the High Court;
- (f) A statement of all money, (h) securities, and equivalent of money received by the election agent from the candidate or any other person for the purpose of expenses incurred or to be incurred on account of or in respect of the conduct or management of the election, with a statement of the name of every person from whom the same may have been received.

Under this section an election agent (or candidate, if his own election agent) is required, within 35 days of the declaration of the poll, to transmit to the returning officer a true return respecting election expenses, containing full particulars of receipts and expenditure relating thereto, accompanied by declarations made by both candidate and election agent before a justice of the peace.

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— Non-compliance with the above regulations without an authorised excuse involves the following consequences :—

1. In the case of the candidate, inability to sit and vote in the House of Commons after the expiration of the statutory 35 days, until the return and declarations have been transmitted, or an authorised excuse allowed, under penalty of forfeiting £100 a day.
2. In the case of either candidate or election agent, such non-compliance is an illegal practice.

A false declaration knowingly made by either candidate or election agent is punishable as perjury, and is, moreover, a corrupt practice.

In the event of absence of the candidate from the United Kingdom at the time of election, his declaration must be made and transmitted within 14 days after his return ; but such authorised delay does not extend to his election agent.

Where claims are allowed by the High Court to be sent in and paid after the statutory 35 days, a return thereof must be sent in to the returning officer, accompanied by a copy of the order of Court, within seven days of payment, under pain of being guilty of an illegal practice.

(a) "*Are declared elected.*"—Rule 45 of the Ballot Act requires that "the returning officer shall, *as soon as possible*, give public notice of the names of the candidates elected." The 35 days includes Sundays and holidays, *see* s. 29, note (d). The election agent is thus allowed just one week from the

time of paying the election bills, for which 28 days (s. 29, sub-sec. 5), are allowed in which to make up his return. Sec. 33.

(b) "*The Election Agent.*"—The sub-agents are not required to transmit any such return; nor make the statutory declaration, sub-sec. 2 below.

(c) "*A true return.*"—See Form given in Sched. 2. An insufficient return of the expenses by an election agent is evidence of knowledge on his part of corrupt practices, and he is held personally guilty of the same (*Bewdley*, 1 O. & H. 20). And where an account was sent in, purporting to be a detailed statement, but consisted merely of heads of the expenditure on a single sheet of paper, and without a single voucher, it was held that this would itself be a *prima facie* case against the respondent (*Bradford*, 1 O. & H. 33).

As the bills and receipts are included in the expression "return respecting election expenses," it will not be a "true return," unless they are transmitted along with the balance sheet, and they are to be kept by the returning officer along with the return for the statutory period of two years (s. 35, sub-sec. 2). See as to such bills and receipts, ss. 29 (1), 31 (3).

(d) "*Personal expenses.*"—See note (a) to s. 31 (2).

(e) "*Returning Officer's charges.*"—See notes to last section.

(f) "*Disputed claims.*"—See s. 29 (7).

(g) "*Unpaid claims.*"—See s. 29 (9).

(h) "*All money,*" &c.—See s. 28. "Person" includes "associations," &c. (s. 64, p. 290).

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(2.) The return so transmitted to the returning officer shall be accompanied by a declaration (i) made by the election agent before a justice of the peace in the form in the second Schedule to this Act (which declaration is in this Act referred to as a declaration respecting election expenses).

(i) "*Declaration.*"—See the Form, *infra*, p. 312.

(3.) Where the candidate has named himself as his election agent, a statement of all money, securities, and equivalent of money paid by the candidate shall be substituted in the return required by this section to be transmitted by the election agent for the like statement of money, securities, and equivalent of money received by the election agent from the candidate; and the declaration by an election agent respecting election expenses need not be made, and the declaration by the candidate respecting election expenses shall be modified as specified (k) in the second Schedule to this Act.

(k) *As specified, &c.*—See the Form, *infra*, p. 311.

(4.) At the same time that the agent transmits the said return, or within seven days afterwards, (l) the candidate shall transmit or cause to be transmitted to the returning officer a declaration made by him before a justice of the peace, in the form in the first part of the second Schedule to this Act (which declaration is in this Act referred to as a declaration respecting election expenses).

(l) "*Or within seven days afterwards.*"—Unless he is out of the United Kingdom, when he is allowed 14 days from his return (sub-sec. 8). See form of declaration, *infra*, p. 311.

(5.) If in the case of an election for any county or borough the said return and declarations are not transmitted before the expiration of the time limited for the purpose, the candidate shall not, after the expiration of such time, (m) sit or vote in the House of Commons as member for that county or borough until either such return and declarations have been transmitted, or until the date of the allowance (n) of such an authorised excuse for the failure to transmit the same, as in this Act mentioned, and if he sits or votes in contravention of this enactment he shall forfeit £100 for every day on which he so sits or votes to any person who sues (o) for the same.

(m) "*After the expiration of such time,*" i.e., in

the case of the return and declaration by the election agent (and by the candidate also, if he is his own election agent), 35 days after the declaration of the poll; and for the candidate, the same period, or within seven days afterwards, or, if he be out of the United Kingdom, 14 days after his return. A candidate may therefore continue to sit and vote, without fear of the penalties imposed under this sub-section, for 42 days, or, in the event of his absence, for 14 days after his return (sub-sec. 8); although, if no authorised excuse be allowed, his election will be avoided on the ground of illegal practice (sub-sec. 6).

(n) "*Until the date of the allowance,*" &c.—See s. 34 (4).

(o) "*To any person who sues.*"—It was decided by the House of Lords, in the recent case of *Bradlaugh v. Clarke* (L. R. 8, App. 354), that where a statute fixes a penalty "to be recovered by action in one of Her Majesty's Superior Courts," the Crown alone can sue, and an action by a common informer will not lie. The above words have therefore been introduced into the present section to make it quite clear, that for the penalty thereby inflicted a common informer may sue (*cp.* C. P. Act, 1854, s. 7). As "person" includes an "association," it is submitted that such actions may be instituted by or on behalf of political clubs or associations.

(6.) If without such authorised excuse as in this Act mentioned, a candidate or an election agent fails to comply with the requirements of this section, he shall be guilty of an illegal practice.

(7.) If any candidate or election agent knowingly makes the declaration required by this section falsely, he shall be guilty of an offence, and on conviction thereof on indictment

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shall be liable to the punishment for wilful and corrupt perjury; (p) such offence shall also be deemed to be a corrupt practice (r) within the meaning of this Act.

(p) "*Perjury*."—Conviction for this crime involves seven years' penal servitude. It is not triable at any quarter sessions (*see* Archbold, 871). It will of course be necessary to prove that the declaration was both *knowingly* and *falsely* made; and it will be competent for the accused to adduce evidence entitling him to the authorised excuse provided in s. 34.

(r) "*Such offence shall also be deemed*," &c.—This must be taken to mean, not that a person thus guilty can be indicted and punished under s. 6, as well as under this section [in which case the prosecutor would be put to his election as to which offence he would proceed against (Archbold, p. 68, *et seq.*)]; but that, while the *punishment* is the same as for perjury, the same *incapacities* shall attach as if it were a corrupt practice (as to which *see* s. 6, sub-sec. 3). In all the other cases, where an offence is declared to involve the *punishment* of a corrupt practice (or as the case may be), the form used is, "he shall be guilty of," &c. Here, however, it is merely declared that the offence "*shall be deemed* to be a corrupt practice."

For the purpose of basing an election petition upon a charge under this section, this offence is to be treated as an illegal practice (*see* s. 40, s.-s. 3).

(8.) Where the candidate is out of the United Kingdom (s) at the time when the return is transmitted to the returning officer, the declaration required by this section may be made by him within 14 days after his return to the United Kingdom, and in that case shall be forthwith transmitted to

the returning officer, but the delay hereby authorised in making such declaration shall not exonerate the election agent from complying with the provisions of this Act as to the return and declaration respecting election expenses.

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(s) "*Out of the United Kingdom.*"—A candidate may be nominated and elected in his absence out of the United Kingdom; and the proposer of a candidate nominated in his absence out of the United Kingdom may withdraw such candidate by a written notice, signed by him and delivered to the returning officer, together with a written declaration of such absence of the candidate (Ballot Act, 1872, s. 1).

A candidate may also be nominated without his consent; but in that case the persons by whom his nomination is subscribed shall be jointly and severally liable for the share of the charges for which he would be liable if he were nominated with his consent (38 & 39 Vic. c. 84, s. 2). If, however, he is elected, he cannot refuse to serve (*Nottingham* 1 Peck. 77; 1 Dougl. 281; 5 Rich. II., Stat. 2, c. 4); and s. 63 (2) enacts that, in such a case, he shall incur no liability "unless he has afterwards given his assent or has been elected," as to effect of which see note to s. 63 (2).

(9.) Where, after the date at which the return respecting election expenses is transmitted, leave is given by the High Court (t) for any claims to be paid, the candidate or his election agent shall, within seven days after the payment thereof, transmit to the returning officer a return of the sums paid in pursuance of such leave, accompanied by a copy of the order of the Court giving the leave, and in default he shall be deemed to have failed to comply (u) with the requirements of this section without such authorised excuse as in this Act mentioned.

(t) "*Leave is given by the High Court.*"—Under s. 29 (9). See note (h) to that section.

Secs. 33, 34. (u) "*Failed to comply.*"—And he will then be guilty of an illegal practice (sub-sec. 6).

Authorised
excuse for non-
compliance
with provisions
as to return and
declaration
respecting
election
expenses.

34.—(1.) Where the return and declarations (a) respecting election expenses of a candidate at an election for a county or borough have not been transmitted as required by this Act, or being transmitted contain some error or false statement, then—

- (a) if the candidate applies to the High Court (b) or an Election Court, and shows that the failure to transmit such return and declarations, or any of them, or any part thereof, or any error or false statement therein, has arisen by reason of his illness, or of the absence, death, illness, or misconduct of his election agent or sub-agent or of any clerk or officer of such agent, or by reason of inadvertence or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant, or
- (b) if the election agent of the candidate applies to the High Court or an Election Court and shows that the failure to transmit the return and declarations which he was required to transmit, or any part thereof, or any error or false statement therein, arose by reason of his illness or of the death or illness of any prior election agent of the candidate, or of the absence, death, illness, or misconduct of any sub-agent, clerk, or officer of an election agent of the candidate, or by reason of inadvertence or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant,

the Court may, after such notice of the application (c) in the said county or borough, and on production of such evidence of the grounds stated in the application, and of the good faith of the application, and otherwise, as to the Court seems fit, make such order for allowing an authorised excuse for the failure to transmit such return and declaration, or for an error or false statement in such return and declaration, as to the Court seems just.

(2.) Where it appears to the Court that any person, being or having been election agent or sub-agent, has refused or failed to make such return or to supply such particulars as will enable the candidate and his election agent respectively to

comply with the provisions of this Act, as to the return and declaration respecting election expenses, the Court before making an order allowing the excuse as in this section mentioned shall order such person to attend before the Court, and on his attendance shall, unless he show cause to the contrary, order him to make the return and declaration, or to deliver a statement of the particulars required to be contained in the return, as to the Court seem just, (d) and to make or deliver the same within such time and to such person and in such manner as the Court may direct, or may order him to be examined with respect to such particulars, and may in default of compliance with any such order order him to pay a fine not exceeding £500.

(3.) The order may make the allowance conditional upon the making of the return and declaration in a modified form or within an extended time, and upon the compliance with such other terms as to the Court seem best calculated for carrying into effect the objects of this Act; and an order allowing an authorised excuse shall relieve the applicant for the order from any liability or consequences under this Act in respect of the matter excused by the order; and where it is proved by the candidate to the Court that any act or omission of the election agent in relation to the return and declaration respecting election expenses was without the sanction or connivance of the candidate, and that the candidate took all reasonable means for preventing such act or omission, the Court shall relieve (e) the candidate from the consequences of such act or omission on the part of his election agent.

(4.) The date of the order, or if conditions and terms are to be complied with, the date at which the applicant fully complies with them, is referred to in this Act as the date of the allowance of the excuse.

This section provides an authorised excuse, under which the candidate and election agent may be exonerated, on application to the High Court, from the consequences of non-compliance with the provisions of s. 33. Provided the neglect was not "by reason of any want of good faith," practically any reasonable excuse of the nature described will be allowed. But satisfactory evidence of the grounds of excuse and of *bona fides* must be produced.

Sec. 34.
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Sec. 34.

Such notice of the application, as to the Court seems fit, must be given in the constituency, and the order making the allowance may be conditional upon compliance with such terms as the Court may think it right to impose.

And on the candidate proving to the Court that he was himself not to blame in the matter, but that his election agent was, the Court will grant the candidate relief (sub-sec. 3). And in the case of misconduct on the part of the election agent or sub-agent, or any person who has acted in that capacity in the matter, the Court will order his attendance, and if he prove contumacious, may inflict a fine not exceeding £500.

(a) "*The Return and declarations.*"—This section applies only to questions arising out of s. 33. For relief for non-compliance with other provisions of the Act, *see* ss. 22 & 23.

(b) "*To the High Court.*"—There may be no petition pending relating to the particular election, and as it may be of importance to forestall the institution of proceedings by any other party, the candidate or election agent should, immediately on discovering any error or other non-compliance with s. 33, make an application to the High Court (*i.e.*, one of the election Judges for the time being, s. 56) in the manner provided, or to be provided, by the Election Petition Rules.

If any election petition is pending, such application should be made *before* the Report of the Judges.

(c) "*Notice of the application, &c.*"—In order that any intending petitioner, or any elector who may

have any reason for opposing such application, may Secs. 34, 35.
be able to do so.

(d) "*As to the Court seem just.*"—The grammar here is somewhat at fault. It should read "as to the Court *shall* seem just."

(e) "*The Court shall relieve.*"—This is imperative; but before making the order the Court will order the attendance of the inculpatcd agents, under sub-sec. 2.

35. (1.) The returning officer at an election, within ten days after he receives (a) from the election agent of a candidate a return respecting election expenses, shall publish a summary of the return in not less than two newspapers circulating in the county or borough for which the election was held, accompanied by a notice of the time and place at which the return and declarations (including the accompanying documents) can be inspected, and may charge the candidate (b) in respect of such publication, and the amount of such charge shall be the sum allowed by the Parliamentary Elections (Returning Officers') Act, 1875. Publication summary of return of election expenses. 38 & 39 Vic. c. 94.

(2.) The return and declarations (including the accompanying documents) sent to the returning officer by an election agent shall be kept at the office of the returning officer, or some convenient place appointed by him, and shall at all reasonable times during two years next after they are received by the returning officer be open to inspection by any person on payment of a fee of one shilling, and the returning officer shall on demand furnish copies (c) thereof or any part thereof at the price of twopence for every seventy-two words. After the expiration of the said two years the returning officer may cause the said return and declarations (including the accompanying documents) to be destroyed, or, if the candidate or his election agent so require, shall return the same to the candidate.

Section 35 relates to the publication of the election expenses. The returning officer is required under this section, within ten days after he receives the return of the expenses, to publish a summary of it in at least two of the local newspapers, accompanied by a notice as to time and place for inspecting the return

Secs. 35, 36. and documents relating thereto. These are to be kept by him for two years, open to public inspection on the payment of a fee of one shilling; and copies must be furnished on demand at the price of two-pence per folio. At the end of two years he may destroy them, unless the candidate or his election agent require them back. He is empowered to charge the candidate for the cost of publication, according to the scale fixed by the 38 & 39 Vic. c. 84.

(a) "*After he receives.*"—The return is to be transmitted to him within 35 days after the election (s. 33, s.-s. 1).

(b) "*May charge the candidate.*"—The amount of such charge is fixed at £1 1s. in boroughs and £2 2s. in counties. See schedule to Act (*infra*, p. 407). But the Act does not apply either to the Universities or to Scotland (s. 68, s.-s. 11), and note (b) to s. 32 above.

(c) "*Shall furnish copies.*"—This provision is imperative. Previously he was not compellable to do so. (*Durham*, 2 O. & H. 135.)

Prohibition of persons guilty of corrupt or illegal practices, &c., from voting.

Disqualification of Electors.

36. Every person guilty of a corrupt or illegal practice, (a) or of illegal employment, paying, or hiring at an election, is prohibited from voting at such election, and if any such person votes his vote shall be void.

(a) "*Corrupt or Illegal Practices.*"—Corrupt practices are not punishable under the Summary Jurisdiction Acts, although they may be summarily tried by an Election Court, s. 43 (4); with the exception of personation, which is felony, they are misdemeanours, and therefore indictable offences (s. 6, *supra*, p. 128), consequently, it would be impossible, in the course of

an election, to convict a person of a corrupt practice, Secs. 36, 37. and on that ground prevent him from voting. His vote, however, is void on his being found guilty subsequently, either on summary trial by the Election Court, or on indictment before a jury.

But illegal practices and illegal employment, &c., are punishable on summary conviction (ss. 10, 21), and therefore, if during the course of an electoral contest, a conviction for any such offence should be obtained, the person so convicted would not be allowed to vote, and if he had already voted, his vote would be void.

For the procedure in cases of summary conviction, see the Summary Jurisdiction Acts.

37. Every person who, in consequence of conviction, (a) or of the report (b) of any Election Court or Election Commissioners under this Act, or under the Corrupt Practices (Municipal Elections) Act, 1872, (c) or under Part IV. of the Municipal Corporations Act, 1882, or under any other Act (d) for the time being in force relating to corrupt practices at an election for any public office, has become incapable of voting at any election, whether a Parliamentary election or an election to any public office, is prohibited from voting at any such election, and his vote shall be void.

Prohibition of disqualified persons from voting.
35 & 36 Vic. c. 60.
45 & 46 Vic. c. 50.

This section prohibits from voting at any election, Parliamentary or otherwise, those who have been disqualified under this Act, or the Municipal Corporations Acts, or other Acts relating to corrupt practices at an election for any public office.

(a) "*Conviction.*"—In the case of a corrupt practice, the incapacity is for seven years, and extends to any election in the United Kingdom (s. 6, sub-sec. 3). The term of disqualification for an illegal practice is five years, and affects only the particular constituency (s. 10).

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(b) "*Report.*"—As to the report of the Election Court, *see* s. 4 and sub-s. 14 of s. 11 of the Act of 1854, which is extended by s. 11 of the new Act to illegal practices. Section 12 of this Act also provides for a similar extension of the powers of the Election Commissioners.

Corrupt
Practices at
Municipal
Elections.

(c) *Corrupt Practices (Municipal Elections) Act, 1872.*—Section 4 of the above Act imposes upon a candidate by whose knowledge and consent any corrupt practices have been proved to have been committed, and upon any person found guilty of any corrupt practice, at an election under the Act, the following disqualifications:—

- (1.) He shall be incapable of holding or exercising any municipal office or franchise, and of having his name placed on the register, or voting at any municipal election;
- (2.) Of acting as a justice of the peace, and of holding any judicial office;
- (3.) Of being elected to, and of sitting or voting in Parliament;
- (4.) Of being registered or voting as a Parliamentary voter;
- (5.) Of being employed by any candidate in any Parliamentary or municipal election;
- (6.) Of acting as overseer or as guardian of the poor.

The above disqualifications last for a period of seven years from the date of the Report of the Election Committee, or of the conviction or judgment.

The above provisions are now replaced by the

corresponding enactments of the Municipal Corporations Act, 1882 (which see in Appendix, p. 417). Secs. 37, 38.

(d) "*Any other Act*," &c., e.g., the Elementary Education Act, 1870, the Public Health Act, 1875, &c. (See definition of "Public Office" in s. 64, *infra*, p. 290).

38.—(1.) Before a person, not being a party (a) to an election petition nor a candidate on behalf of whom the seat is claimed by an election petition, is reported by an Election Court, (b) and before any person is reported by Election Commissioners, to have been guilty, at an election, (c) of any corrupt or illegal practice, the Court or Commissioners, as the case may be, shall cause notice to be given (d) to such person, and if he appears in pursuance of the notice, shall give him an opportunity (e) of being heard by himself and of calling evidence in his defence to show why he should not be so reported.

Hearing of person before he is reported guilty of corrupt or illegal practice, and incapacity of person reported guilty.

This section (1) gives every person an opportunity of being heard in self-defence before he is reported guilty of any corrupt or illegal practice, either by Election Judges or Commissioners, or by a municipal Election Court (sub-sec. 10); (2) incapacitates a person so reported, as if he had been convicted at the date of the election, and whether he has obtained a certificate of indemnity or not (s. 59); (3) makes special provision for the punishment of justices of the peace, professional men, and licensed persons.

(a) "*Not being a party*," &c.—The parties to a petition, or the candidate on whose behalf the seat is claimed, are of course entitled to appear by counsel.

(b) "*Election Court*."—This includes, for the purposes of this section, a *municipal* Election Court (sub-sec. 10).

(c) "*At an election*."—i.e., Parliamentary or municipal (see sub-sec. 10).

(d) "*Cause notice to be given*."—This may be done,

Sec. 38. — either by delivering the same to the person, or by posting it as a registered letter, to his last-known address, or as the Court, &c., may direct. See s. 62 (2).

Hearing of
person by
himself before
report.

(e) "*An opportunity*,"—i.e., not merely "the kind of opportunity which a witness has who is called up upon the spur of the moment, and who is subject to cross-examination;" but "an opportunity of being heard when he has had a fair warning of the charge, and is asked to meet it and be heard by himself or his counsel" (*pr.* Lord Blackburn, *Bewdley*, 1 O. & H. 176). This case was decided under s. 45 of the P. E. Act, 1868 (now repealed), which, providing that a "person found guilty—in any proceeding in which after notice of the charge he has had an opportunity of being heard—shall," &c., left it doubtful whether counsel could appear in such a case. But under this section a person may only appear "by himself." If this should appear to bear hardly upon the offender, it is to be recollected that the report will not be made until the whole case has been thoroughly sifted, and the innocence or guilt of the several parties can thus be fully established by counsel on each side. To allow a second hearing with counsel would practically be to re-try the case. The liberty thus allowed corresponds rather to the question always put to a criminal before sentence is passed, as to whether he has anything to say why the sentence of the Court should not pass upon him.

Person reported
may appeal to
the Assizes.

(2.) Every person reported by Election Commissioners to have been guilty at an election of any corrupt or illegal practice may appeal against such report to the next Court of oyer and terminer or gaol delivery (f) held in and for the county or place in which the offence is alleged to have been

committed, and such Court may hear and determine the appeal; and subject to rules of Court (*g*) such appeal may be brought, heard, and determined in like manner as if the Court were a Court of quarter sessions (*h*) and the said commissioners (*i*) were a Court of summary jurisdiction, and the person so reported had been convicted by a Court of summary jurisdiction for an offence under this Act, and notice of every such appeal shall be given to the Director of Public Prosecutions in the manner and within the time directed by rules of Court, and subject to such rules then within three days after the appeal is brought.

Sec. 38.
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(*f*) "*Oyer and Terminer or Gaol Delivery*."—The Crown Courts at the Assizes are held by one or more commissioners sitting under one or more of the following commissions, all or any of which may be issued to any part of England, and at any time when Her Majesty thinks proper (Judicature Act, 1873, ss. 26 and 29):—(*a*) Commission of *oyer and terminer*, to inquire into treasons, felonies and misdemeanours. It applies only to cases where the indictment is found before the commissioners.

(*b*) Commission of *gaol delivery*, which enables the commissioners to try all persons in prison or on bail.

(*c*) The commission of *Assize and Nisi Prius*, which appears to apply only to *Nisi Prius* records; it commands the commissioners to take all the assizes, juries, and certificates before whatsoever justices arraigned, and to try all offences which are sent down by the High Court to be tried before them.

(*d*) Commission of *the peace*, which, however, appears to be only a narrower form of *oyer and terminer* (Stephen's "Crim. Procedure," p. 12).

(*g*) "*Rules of Court*."—The authority for drawing up such rules is the Committee of Judges, as fixed by the Supreme Court of Judicature Act, 1881, s. 19 (44 & 45 Vic. c. 68). See s. 56 (2).

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(h) "*As if a Court of Quarter Sessions.*"—As to the procedure on such appeals, *see* the Supreme Court of Judicature Act, 1879, s. 31. No indictment for any corrupt practice can be tried before any Court of Quarter Sessions (C. P. Act, 1854, s. 10, and s. 53 of Act, 1883).

(i) "*Commissioners.*"—Not, however, when reported by the Election Court, against whose decision there is no appeal.

Election Judge
may be
appointed to
hear appeals.

(3.) Where it appears to the Lord Chancellor that appeals under this section are interfering or are likely to interfere with the ordinary business transacted before any Courts of oyer and terminer (k) or gaol delivery, he may direct that the said appeals, or any of them, shall be heard by the Judges for the time being on the rota for election petitions, and in such case one of such Judges shall proceed to the county or place in which the offences are alleged to have been committed, and shall there hear and determine the appeals in like manner as if such Judge were a court of oyer and terminer.

(k) "*Courts of Oyer and Terminer, &c.*"—*See* as to Scotland, s. 68 (5). The power hereby given to the Lord Chancellor is, by the same section (sub-sec. 13), to be exercised in Scotland by the Lord Justice-General. These appeals, it will be observed, are to be heard by one of the election Judges, not by a full Court of two Judges.

Who shall have
the powers, &c.,
of an election
court.

4. The provisions of the Parliamentary Elections Act, 1868, with respect to the reception (l) and powers of and attendance on an Election Court, and to the expenses of an Election Court, and of receiving and accommodating an Election Court, shall apply as if such Judge were an Election Court.

(l) "*Reception,*" &c.—The election Judges (there being now two, under 42 & 43 Vic. c. 75) are to be treated so far as circumstances admit, and, subject to the provisions of the P. E. Act, 1868, have the

same powers, as a Judge of Assize and *Nisi Prius*. Sec. 38.
(See 31 & 32 Vic. c. 125, ss. 28-30, Appendix, p. 359).

(5.) Every person who after the commencement (*m*) of this Act is reported by any Election Court or Election Commissioners to have been guilty (*n*) of any corrupt or illegal practice at an election, shall, whether he obtained a certificate of indemnity (*o*) or not, be subject to the same incapacity (*p*) as he would be subject to if he had at the date of such election been convicted of the offence of which he is reported to have been guilty: Provided that a report of any election commissioners inquiring into an election for a county or borough shall not avoid (*r*) the election of any candidate who has been declared by an Election Court on the trial of a petition respecting such election to have been duly elected at such election or render him incapable of sitting in the House of Commons for the said county or borough during the Parliament for which he was elected.

Incapacity of persons guilty, though indemnified, to date from election, &c.

(*m*) "*Commencement*."—The 15th of October, 1883 (s. 67). Section 49 excludes from the inquiries of Election Commissioners all matters relating to elections held prior to the passing of this Act, except where proceedings were pending at the time, *i.e.*, on the 25th of August, 1883.

(*n*) "*Guilty*," *i.e.*, in the case of the candidate, either personally or with his knowledge and consent; in other cases, personally only (s. 11).

(*o*) "*Certificate of indemnity*."—See s. 59. It will only be granted on the witness answering truly all the questions required by the Court.

(*p*) "*Incapacity*."—In the case of corrupt practices—for seven years to vote in any constituency (s. 6); hold any judicial office (s. 64); or be elected to or sit in Parliament. In the case of illegal practices—incapacity for five years to vote at any election in his own constituency (s. 10). In the case of municipal elections the disqualifications are different, though

Effect of this sub-section.

Sec. 38. the other punishments are the same. (*See* M. C. Act, 1882, in Appendix, p. 417).

— This sub-section makes the punishment of those who are merely reported by an Election Court or Commission less severe than that imposed on those who are convicted on indictment, the reason being, no doubt, that the report of the Judge “does not come within the case of being found guilty. The determination of the Judge is only incidentally a determination upon the case. He has only to make a report, and it can hardly be said that that is the same as finding a man guilty” (Lord Blackburn, in *Bewdley*, 1 O. & H. 176). In the latter case, the term of disqualification commences from the date of the conviction (s. 6, sub-s. 3); but where the report is not followed by any prosecution and conviction, the term of incapacity dates back to the time of the election, and the person reported is only subject to the same incapacity which he would be subject to, if *at the date of the election* he had been convicted of the same offence. The effect of this becomes apparent when it is recollected that the report of an Election Court or Commission may not be, and usually is not, made for some months after the date of the election. Thus, suppose an election to take place on the 20th of October, 1883, and that, in consequence of corrupt and illegal practices, A. and B. have been disqualified by the report of the Court or the Commissioners, dated the 20th of April, 1884, for terms of seven and five years respectively, but that in neither case a prosecution has been instituted, then, under this section, each term of incapacity will date from the 20th of October (the date of the election), instead of

from the 20th of April following (date of the report): so that the respective terms will thereby be reduced by six months in each case. And supposing (if it were in the least degree likely) a period of seven years, or five years, to have elapsed between the date of the election and the date of the report, neither A. nor B. would suffer any incapacity at all.

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This provision was framed, as it would seem, with a view to inflicting a punishment, though of a less severe character, on those who, though guilty, are not liable to prosecution by reason of having received a certificate of indemnity. The words "at the date of *such election*" were substituted at the last moment, in Committee, for "at the date of *such report*," hence the discrepancy already pointed out between this section and s. 4 probably passed unnoticed. And the question therefore arises, whether candidates are to be included in the expression "every person" of this section or not. See also s. 11, where the incapacity likewise runs "from the date of *the report*."

(r) "*Shall not avoid*."—The Election Court is of course a higher tribunal than the Election Commissioners; and therefore the decision of the former cannot be reversed by that of the latter, even though fresh evidence may have been adduced at the later inquiry. The function of the Election Court, moreover, is primarily to decide upon the validity or otherwise of the election, but the duties of the Commissioners are merely to inquire into the prevalence of corrupt practices with a view to punishing the offenders. (*See* 15 & 16 Vic. c. 57).

(6.) Where a person who is a justice of the peace is reported by any Election Court or Election Commissioners to have been

Further
punishment of
magistrates,

Sec. 38.

guilty of any corrupt practice in reference to an election, whether he has obtained a certificate of indemnity or not, it shall be the duty of the Director of Public Prosecutions to report the case to the Lord High Chancellor (s) of Great Britain with such evidence as may have been given of such corrupt practice, and where any such person acts as a justice of the peace by virtue of his being, or having been, mayor of a borough, the Lord High Chancellor shall have the same power to remove such person from being a justice of the peace as if he was named in a commission of the peace.

(s) "*To the Lord High Chancellor.*"—Justices of the peace, who are so by commission, are appointed and removed by the sovereign, acting through the Lord Chancellor. "If we are to take judicial notice that the appointment and removal of magistrates is generally left to the Keeper of the Great Seal (*i.e.*, the Lord Chancellor), we are bound to consider that he is only a responsible adviser of the Crown in the exercise of this prerogative" (*pr.* Lord Campbell in *Harrison v. Bush*, 5 E. & B. 344, at p. 351). The mode of determining their authority is by express writ under the great seal (Lamb. 68; Dalton, 11).

But the authority of mayors and the chief officers of cities and corporate towns, so constituted by Royal Grant, "is not revocable at the King's pleasure, as is the commission of the peace" (Dalton, p. 10; Lamb. 25; Brown on Commission, 5). And under the Municipal Corporations Act, 1882, s. 155, "the mayor shall by virtue of his office be a justice for the borough, and shall, unless disqualified to be mayor, continue to be such justice during the year next after he ceases to be mayor."

The present section of the new Act confers upon the Lord Chancellor the power of removing from being a justice of the peace any such *ex officio* justice

who has been reported guilty of any corrupt practices by the Election Court or Commissioners, whether he has a certificate of indemnity or not. Sec. 38.

The effect of the section is limited to those who are guilty of corrupt practices, and does not extend to illegal practices.

The consequences entailed upon the parties mentioned in this and the following sub-sec. ensue upon their being reported; but in the case of licensed persons, under clause 8, the party must be *convicted* of bribery or treating, or else reported of having knowingly suffered the same to take place on his premises.

For Scotland, *see* s. 68 (13). The Lord High Chancellor of Ireland has the same authority, *see* s. 69 (7).

(7.) Where a person who is a barrister or a solicitor, or who belongs to any profession (t) the admission to which is regulated by law, is reported by any Election Court or Election Commissioners (u) to have been guilty of any corrupt practice in reference to an election, whether such person has obtained a certificate of indemnity or not, it shall be the duty of the Director of Public Prosecutions to bring the matter before the Inn of Court, High Court, or tribunal having power to take cognisance of any misconduct of such person in his profession, and such Inn of Court, High Court, or tribunal may deal with such person in like manner as if such corrupt practice were misconduct by such person in his profession. Of barristers, solicitors, and others.

(t) "*Or who belongs to any profession,*" &c.—These words are express, and not merely "*words ejusdem generis,*" which would confine the operation of the clause to the specific classes already mentioned. Under this clause, therefore, corrupt practices by members of the following professions will be punishable by the proper authority or tribunal in each case

Sec. 38. — respectively, as if such misconduct were misconduct by them in their profession :—

- (1.) A barrister, by his Inn of Court, which has power to disbench or disbar him.
- (2.) A solicitor, by the High Court of Justice of which he is an officer, and by which he may be struck off the rolls.
- (3.) A clergyman, by his bishop (44 Geo. III. c. 43; 28 & 29 Vic. c. 122).
- (4.) Soldiers, sailors and civil servants, by their respective departments in the Government.
- (5.) A medical practitioner (21 & 22 Vic. c. 56).
- (6.) A dentist (41 & 42 Vic. c. 33).
- (7.) London brokers (6 Anne c. 68; 33 & 34 Vic. c. 60).

It will be seen that the punishment in the case of any of the above will be very severe, as even where only reported, and not prosecuted also, their misconduct, when brought to the cognisance of their respective professional tribunals, will probably have the effect of ruining their professional prospects. It is, of course, not imperative upon the Inn of Court, &c., to act upon the report; but it is intended that such misconduct shall be regarded as a disgrace to the profession to which the offender may belong.

(u) "*Or Election Commissioners.*"—The Public Prosecutor is required to attend every trial of an election petition, but not, it appears, the proceedings of the Election Commissioners (s. 43, sub-s. 1). Hence, as he is by this section required to act upon the report of the latter as well as the former, provision is made

by sub-sec. 9, below, that the Commissioners shall report the case to him, &c. His presence in the Election Court renders unnecessary such a provision in that case.

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—

(8.) With respect to a person holding a licence (x) or certificate under the Licensing Acts (in this section referred to as a licensed person), the following provision shall have effect:—

Of licensed persons.

- (a) If it appears to the Court by which any licensed person is convicted of the offence of bribery or treating that such offence was committed on his licensed premises, the Court shall direct such conviction to be entered in the proper register of licences. (y)
- (b) If it appears to an Election Court or Election Commissioners that a licensed person has knowingly suffered any bribery or treating in reference to any election to take place upon his licensed premises, such Court or Commissioners (subject to the provisions of this Act (z) as to a person having an opportunity of being heard by himself and producing evidence before being reported) shall report the same; and whether such person obtained a certificate of indemnity or not, it shall be the duty of the Director of Public Prosecutions to bring such report before the licensing justices from whom or on whose certificate the licensed person obtained his licence, and such licensing justices shall cause such report to be entered in the proper register of licences.
- (c) Where an entry is made in the register of licences of any such conviction of or report respecting any licensed person as above in this section mentioned, it shall be taken into consideration by the licensing justices in determining whether they will or will not grant to such person the renewal of his licence or certificate, and may be a ground, (a) if the justices think fit, for refusing such renewal.

This sub-sec. provides for two distinct cases (i.), where the licensee is convicted of bribery or treating, on his licensed premises, when the Court convicting him shall direct such conviction to be entered in the register; (ii.) when he is reported by an Election

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Court or Commissioners, of having knowingly suffered bribery or treating to take place on his premises. The scope of the clause is limited to the two offences of bribery and treating, whereas the preceding clauses include any corrupt practice.

Provisions of
the Licensing
Acts.

(x) "*Licence.*"—See Licensing Act, 1872 (35 & 36 Vic. c. 94 s. 3), which enacts that "no person shall sell or expose for sale by retail any intoxicating liquor (*i.e.*, spirits, wine, beer, porter, cider, perry and sweets, s. 74, as defined in 33 & 34 Vic. c. 29, s. 3) without being duly licensed to sell the same, or at any place where he is not authorised by his licence to sell the same." And such licences are to be granted or renewed only upon production of a certificate specifying the name and address of the person thereby authorised to receive a licence, the description of licence or licences authorised to be granted to him, &c. (*see* Wine and Beerhouse Act, 1869, 32 & 33 Vic. c. 27, ss. 4 and 6).

But no magistrate's licence is required for—

- (1.) The sale of wine by retail, not to be consumed on the premises, by a wine merchant (including a grocer, 23 Vic. c. 27, s. 3, 6) in pursuance of a wine dealer's licence granted by the Commissioners of Inland Revenue; or
- (2.) The sale of liquors or spirits by retail, not to be consumed on the premises, by a wholesale spirit dealer, having an Excise retail licence under the 24 & 25 Vic. c. 21.

(y) "*The Proper Register of Licences.*"—See the Licensing Act, 1872 (35 & 36 Vic. c. 94), s. 36. This register is to be kept by the clerk of the licensing

justices in every licensing district, and is to be open at any reasonable time to inspection, on payment of 1s., by any ratepayer, owner of licensed premises, and holder of any licence, and by the police without payment. Sec. 38.

(z) "*Provisions of this Act.*"—Sub-sec. 1, above, p. 203.

(a) "*May be a ground for refusing.*"—This gives the licensing authorities power, but does not require them, to refuse a licence where the licensee has been convicted or reported under this section. The justices have now a "free and unqualified discretion" in the granting or refusing of licences; the restrictions imposed upon them in respect of off-licences, by s. 8 of the Wine and Beerhouse Act, 1869 (32 & 33 Vic. c. 27), having been removed by the Beer Dealers' Retail Licences Acts of 1880 and 1882 (43 Vic. c. 6, and 45 & 46 Vic. c. 34). Power of licensing authorities.

There is no appeal against the decision of the magistrates to refuse a *new* licence, the provision to that effect in the Act of 1828 (9 Geo. IV. c. 61), s. 27, having been repealed by the Act of 1872, s. 75. The grant, however, of a new licence, to be valid, must be confirmed by the County Licensing Committee (Act of 1872, s. 37). But where the renewal or transfer of a licence is refused, an appeal lies to Quarter Sessions by any person who shall think himself aggrieved. (Act of 1828, s. 27). And, consequently, it will be possible to appeal against a decision based upon this sub-section.

(9.) Where the evidence showing any corrupt practice to have been committed by a justice of the peace, barrister, solicitor, or other professional person, or any licensed person, was given before Election Commissioners, those Commissioners Case to be reported to Public Prosecutor.

Secs. 38, 39. shall report the case to the Director of Public Prosecutions, with such information as is necessary or proper for enabling him to act under this section.

(10.) This section (b) shall apply to an Election Court under this Act, or under part iv. of the Municipal Corporations Act, 1882, and the expression election shall be construed accordingly.

Section applies
to municipal
elections.

(b) "*This section,*" &c.—The Municipal Election Court is to consist of a barrister of not less than 15 years standing (not being a Member of Parliament, or holding any other office or place of profit under the Crown, except that of Recorder), without a jury. He may not, however, try any election petition relating to any borough of which he is Recorder, or in which he resides, or which is on the circuit on which he practices. The Court so constituted has the same powers and privileges as the election Judges; but any fine or order of committal may be varied or discharged by the High Court.

The M. C. Act, 1882, applies only to England, the Corrupt Practices (Municipal Elections) Act, 1872, being still in force as regards Ireland (*see* s. 64); and the corresponding Acts for Scotland (*see* s. 68, sub-sec. 1) contain no provisions as to corrupt practices at municipal elections.

List in register
of voters of
persons inca-
pacitated for
voting by
corrupt or
illegal
practices.

39. (1.) The registration officer (a) in every county and borough shall annually make out a list containing the names and descriptions of all persons who, though otherwise qualified to vote at a Parliamentary election for such county or borough respectively, are not capable of voting by reason of having, after the commencement of this Act, (b) been found guilty of a corrupt or illegal practice on conviction or by the report (c) of any Election Court or Election Commissioners, whether under this Act or under part iv. of the Municipal Corporations Act, 1882, (d) or under any other Act for the time being in force relating to a Parliamentary election or an election to any public

office; and such officer shall state in the list (in this Act referred to as the corrupt and illegal practices list) the offence of which each person has been found guilty.

Sec. 39.
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This section contains the following enactments:—

- (1.) The registration officer is to examine the reports of any Election Court or Election Commissioners upon any election in his county or borough, Parliamentary or otherwise, and therefrom annually make out a corrupt and illegal practices list containing the names of all persons disqualified on account of those offences (sub-secs. 1 and 2).
- (2.) Such list is to be published by the overseers of every parish within the county or borough, who are also to omit such names from the register of electors entitled to vote, or mark the same as 'objected' in the lists of claimants (sub-secs. 3 and 8).
- (3.) Persons named in the said list may claim to be omitted therefrom; and persons entitled to object to any list of voters may object to such claim for omission (sub-sec. 4).
- (4.) The revising barrister is to deal with all such claims or objections as far as possible in the same way as he deals with other claims and objections. He may also, after hearing a person in self-defence, place him on the corrupt practices list, if it appears proper to do so, although his name is not already

Sec. 39.

placed thereon. But his functions are limited to the mere determining whether or not the person is incapacitated (subsecs. 5-7).

(a) "*Registration officer*," i.e., in England and Ireland, the Clerk of the Peace in a county, and Town Clerk in a borough (s. 64); and in Scotland, an assessor under the Registration Acts (s. 68)—for any wilful misfeasance or wilful act of omission or commission, he is liable under s. 61 (2).

(b) "*After the commencement of this Act*," i.e., after the 14th October, 1883, as the new Act came into force on the 15th of October, 1883 (s. 67).

(c) "*On conviction or by the Report*," &c.—For the difference in the duration of the incapacity, according as it results from a conviction, or from being reported only, see note to s. 38 (5).

(d) *Part iv. of the M. C. Act*.—See Appendix, p. 417. This Act, however, applies to England only; in Ireland the C. P. (M. C.) Act, 1872, being still in force; and for Scotland, see s. 68 (1).

Registration
officers to
examine
election report,

(2.) For the purpose of making out such list he shall examine the report of any Election Court or Election Commissioners who have respectively tried an election petition or inquired into an election where the election (whether a Parliamentary election or an election to any public office) was held in any of the following places (e); that is to say,

(a) If he is the registration officer of a county, in that county, or in any borough in that county; and

(b) If he is the registration officer of a borough, in the county in which such borough is situate, or in any borough in that county.

(e) "*In any of the following places*."—This would not necessarily include all those who are incapacitated under s. 6 (3) from being registered as electors,

or voting at *any* election in the United Kingdom. For there may be outvoters who have incurred this general incapacity through their conduct in some distant constituency. But although he must annually make out a list of *all* such persons (sub-sec. 1), so far as they belong to the constituency under his charge, he is not required to search through the reports other than those herein specified.

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(3) The registration officer shall (f) send the list to the overseers (g) of every parish (h) within his county or borough (i), together with his precept (k), and the overseers shall publish (l) the list, together with the list of voters, and shall also, in the case of every person in the corrupt and illegal practices list, omit his name from the list of persons entitled to vote, or, as circumstances require, (m) add "objected" before his name in the list of claimants or copy of the register (n) published by them, in like manner as is required by law (o) in any other cases of disqualification.

and send corrupt practice list to overseers, &c.

(f) "*The Registration Officer shall send,*" &c.—This sub-section applies only to England; for the corresponding provision in respect of Scotland, *see* s. 68 (12), and for Ireland, s. 69 (4).

(g) "*Overseers*" means "all persons who, by virtue of any office or appointment, shall execute the duties of overseers of the poor" (6 Vic. c. 18, s. 101).

(h) "*Parish*" means "every parish, township, village, hamlet, district or place maintaining its own poor" (*ib.*), and by s. 22 of the 31 & 32 Vic. c. 58, "where any parish in a county, city or borough forms part of more than one polling district, the part of such parish situate in each polling district shall be deemed to be a separate parish for the purposes of the revision of voters and the list and register of voters, and may be designated by some

Sec. 39. distinguishing addition in the list of voters for such part of a parish.”

(i) “*County or borough.*”—See the definitions of these terms in the P. E. Act, 1868, Appendix, p. 351, which are practically the same as those of the 6 Vic. c. 18, s. 101; except that the latter does not include universities in the term “borough,” as the former Act does.

Proceedings in
connection with
registration.

(k) “*Precept.*”—In *counties*, the precept is a form of instruction to overseers, informing them of the nature of their duties in the registration, and how to discharge them. Its form is to follow that numbered 1 in Sched. A to Act 28 & 29 Vic. c. 36. But as, by s. 58 of the R. P. Act, 1867, “All precepts . . . relating to the registration of voters shall be framed and expressed in such manner and form as may be necessary for the carrying the provisions of this Act into effect,” it is obvious that alterations may be introduced, as required, into the form provided (*cp.* 41 & 42 Vic. c. 26, s. 8).

The precept is to be made and delivered to the overseers of every parish and township within the county, on or before the 10th June in every year (6 Vic. c. 18, s. 3).

In *boroughs* (6 Vic. c. 18, s. 10), the town-clerk has similarly and within the same time to send to the “overseers of every parish or township situate wholly or in part within such city or borough, or within any place sharing in the election for such city or borough, his precept,” according to the form given in Sched. to 41 & 42 Vic. c. 26; and *see* s. 8 of same.

(l) “*Publish,*” &c.—The list of voters, both in the

counties and the boroughs, is to be published by the overseers on or before the 1st August (6 Vic. c. 18, ss. 5 and 13). Sec. 39.
—

(m) "*Or as circumstances require,*" &c.—The overseers of every parish and township are required, on or before the 20th June in every year, to give notice* requiring voters to send in their claims, and such claims are to be sent in on or before the 20th July (6 Vic. c. 18, s. 4). The overseers are then required, on or before the last day of July, to prepare a list of such claimants; and "if they shall have reasonable cause to believe that any person whose name shall appear in such list of claimants, or in the copy of the register relating to their parish or township, and received by them from the clerk of the peace, is not entitled to have his name upon the register then next to be made, shall add the word 'objected' before the name of every such person on the margin of such list," &c. (*ib.* s. 5). Therefore, if the registration officers have omitted any persons from the corrupt and illegal practices list, whose name the overseers have reasonable cause to believe should not appear in the register of voters, they are not of themselves to insert those names in the corrupt and illegal practices list, but to mark them as "objected" in the margin of the list of claimants or copy of the register published by them on or before the 1st of August.

(n) "*List of Claimants or Copy of the Register.*"—The Register.
The lists of voters do not become the register for the year, until all the various proceedings connected with

* The notice to be given by the overseers in boroughs differs from that of the counties, owing to the difference in the nature of the qualification required, but otherwise the procedure as to the preparation of the electoral lists is the same in the boroughs as in the counties.

Sec. 39. the revision have been completed. Thus, after the lists of claims and objections have been duly drawn up and published by the overseers (6 Vic. c. 18, s. 34), they are to be produced by them, together with a copy of the register then in force, at the Courts of the revising barristers, who shall finally determine upon the validity of such claims and objections (*ib.* s. 41), and after reading aloud all alterations, corrections, &c., made by him (28 & 29 Vic. c. 36, s. 15), sign each page of the several lists so settled. The lists thus signed shall then be forthwith transmitted by him to the clerk of the peace, who shall keep the same among the records of the sessions, and forthwith cause them to be printed; the clerk of the peace also is to sign and deliver the books so printed, on or before the last day of December, to the sheriff for safe keeping (*ib.* s. 47), and the said books shall then, but not till then (*Brumfit v. Bremner*, K. & G. 352), be the final register for the ensuing year, commencing on the 1st of January following (30 & 31 Vic. c. 102, s. 38); but if no list has been made out or published, the former list is to remain in force (6 Vic. c. 18, s. 27). Similarly, the town clerk in boroughs has to sign the finally revised and printed lists, and deposit them within the same period with the returning officer, *i.e.*, the mayor (6 Vic. c. 18, s. 48).

(o) "*As is required by law,*" *i.e.*, the Registration Act (6 Vic. c. 18), and the several Acts amending the same.

Claims and
objections
as to C. P. List,
how to be dealt
with.

(4.) Any person named in the corrupt and illegal practices list may claim to have his name omitted therefrom, and any person entitled to object (*p*) to any list of voters for the county or borough may object to the omission of the name of any

person from such list.^(r) Such claims and objections^(s) shall be sent in within the same time and be dealt with in like manner, and any such objection shall be served on the person referred to therein in like manner, as nearly as circumstances admit, as other claims and objections under the enactments relating to the registration of Parliamentary electors.

Sec. 89.
—

(p) "*Any person entitled to object,*" &c.—See note (s) below on claims and objections.

(r) "*From such list,*" i.e., from the corrupt and illegal practices list.

(s) "*Such claims and objections,*" &c.—The course to be pursued in respect of these differs in counties and in boroughs.

(A.) *As to Claims.* — (1.) *In Counties.* — The claimant must, on or before the 20th of July, deliver or send to the overseers the requisite notice in writing, signed by himself (6 Vic. c. 18, s. 4) or by his direction (*Davies v. Hopkins*, 3 C. B. 376). And the overseers must, on or before the 1st of August, sign and publish the list of such claimants, marking as "objected" those whom they think disqualified. But the £12 occupiers under the R. P. Act, 1867, must claim on or before the 25th of August, as in the case of boroughs (see 6 Vic. c. 18; 30 & 31 Vic. c. 102, s. 30, and 31 & 32 Vic. c. 58, s. 17).

Claims to be on register, in counties,

(2.) *In Boroughs.*—(a) The claimant, if a householder, must, on or before the 25th of August, deliver or send to the overseers the requisite signed notice in writing (6 Vic. c. 18, s. 15, extended by the 30 & 31 Vic. c. 102, s. 30, sub-s. 1, and the 31 & 32 Vic. c. 58, s. 17). (b) If a lodger, his claim shall, after the last day of July and on or before the 25th of August, be delivered to the overseers, &c. (30 & 31 Vic. c. 102, s. 30, sub-s. 2). And, in either case, the lists of

in boroughs.

Sec. 30. claimants are to be published on or before the 1st of September (6 Vic. c. 18, s. 18; 30 & 31 Vic. c. 102, s. 30, sub-s. 2).

Objections to such claims, in counties,

(B.) *As to Objections.*—(1.) *In Counties.*—“Every person who shall be upon the register (*see note (n)* above, p. 221) for the time being may object to any other person upon any list of voters (*i.e.*, whether on the register or on the list of claimants), but notice of such objection, signed by the objector himself, must be sent to the overseers and also to the person objected to, on or before the 20th of August (6 Vic. c. 18, s. 7; 28 & 29 Vic. c. 36, s. 4). The overseers shall publish, on or before the 1st of September, lists of the persons so objected to (6 Vic. c. 18, s. 8), and shall at the same date give to the clerk of the peace the copies of the corrected register and of the lists of claimants (*ib.* s. 9), which, or abstracts of which, are afterwards to be sent to the revising barristers (*ib.* s. 31).

In boroughs.

2. *In Boroughs.*—Objections may be made by any person whose name is “in any list of voters,”* and may be sent in up to the 25th of August, and the lists are to be delivered to the town clerk on or before the 29th of August (6 Vic. c. 18, ss. 17, 18, 19).

How to be dealt with by revising barrister.

(5.) The revising barrister (*t*) shall determine such claims and objections and shall revise such list in like manner as nearly as circumstances admit as in the case of other claims and objections, and of any list of voters.

(*t*) “*The Revising Barrister,*” &c.—For the mode of procedure in the revision Courts, *see* 6 Vic. c. 18, s. 37 and *seqq.*, as amended by 41 & 42 Vic. c. 26, s. 7,

* *i.e.* “The objector must be one who is a voter on the lists published in the year of registration, not one who is on the current register, which was merely the revised lists of the previous year.” (Judgment of Revising Barrister in Langley’s case, *Times*, 10th October, 1883).

and 28 & 29 Vic. c. 36, ss. 7, 8, and 41 & 42 Vic. c. 26, s. 28, the latter enactment being substituted, in Parliamentary boroughs, for the provisions of the 6 Vic. c. 18, s. 40.

Sec. 39.

For every ground of objection, which, in the opinion of the revising barrister, shall have been groundlessly or frivolously and vexatiously stated in a notice of objection, he shall, on application, award costs against the objector, even if the name objected to be expunged on some other ground of objection (28 & 29 Vic. c. 36, s. 8.)

Any person aggrieved by or dissatisfied with any decision of the revising barrister on any point of law material to the result of the case, may appeal, when the barrister must prepare a written statement of the facts and of his decision, and the matter comes before the Queen's Bench Division in the same way as a special case from Quarter Sessions (6 Vic. c. 18, s. 42).

(6.) Where it appears to the revising barrister that a person not named in the corrupt and illegal practices list is subject to have his name inserted in such list, he shall (whether an objection to the omission of such name from the list has or has not been made, but), after giving such person an opportunity (u) of making a statement to show cause to the contrary, insert his name in such list and expunge his name from any list of voters.

Revising barrister may insert names in C. P. list after hearing party.

(u) "*An opportunity . . . to show cause.*"—By himself, for "at the holding of such Courts, no party or other person shall appear or be attended by counsel" (6 Vic. c. 18, s. 41).

(7.) A revising barrister in acting under this section shall determine only whether a person is incapacitated by conviction or by the report of any Election Court or Election Commissioners, and shall not determine whether a person has or has not been guilty of any corrupt or illegal practice.

Duties of revising barrister under this section.

Secs. 39, 40. (8.) The corrupt and illegal practices list shall be appended to the register of electors, and shall be printed and published therewith wherever the same is printed or published.

—
Publication of
C. P. list.

The clerk of the peace of every county, and the town clerk of every city and borough, are to keep printed copies of the register, and sell them or any parts thereof to any person applying for the same at a price fixed by statute (6 Vic. c. 18, s. 49).

Proceedings on Election Petition.

Time for
presentation
of election
petitions
alleging illegal
practice.

40.—(1.) Where an election petition questions the return or the election upon an allegation of an illegal practice, (a) then notwithstanding anything in the Parliamentary Elections Act, 1868, (b) such petition, so far as respects such illegal practice, may be presented within the time following; (that is to say)—

- (a) At any time before the expiration of fourteen days after the day (c) on which the returning officer receives the return and declarations respecting election expenses by the member to whose election the petition relates and his election agent.
- (b) If the election petition (d) specifically alleges a payment of money, or some other act to have been made or done since the said day by the member or an agent of the member, or with the privity of the member or his election agent in pursuance or in furtherance of (e) the illegal practice alleged in the petition, the petition may be presented at any time within twenty-eight days after the date of such payment or other act.

This section extends the time within which an election petition, based upon allegations of *illegal* practices, may be presented under the P. E. Act, 1868 (31 & 32 Vic. c. 125), so as to cover the period within which the returns as to the election expenses have to be sent in. It is also to apply to offences relating to such returns and declarations, and whether or not the alleged illegal practice amounts to a corrupt practice. Except in this latter case, the

time within which petitions based on allegations of *corrupt* practices may be presented is still regulated by the P. E. Act, 1868. Sec. 40.

(a) "*An illegal practice.*"—As to what constitutes an illegal practice, *see* ss. 6–8, 18 (2), 25 (2), 26 (2) and (4), 29 (5), and Table of Offences at p. 6. A petition may also be based upon general intimidation, in which case the fact must be averred therein (*Cheltenham*, 19 L. T. 819; *Salford*, 20 *ib.* 124).

(b) "*Parliamentary Elections Act, 1868.*"—*See* s. 6, Appendix, p. 352.

(c) "*Fourteen days after the day,*" &c.—So that the longest period allowed for the presentation of petitions under this sub-section will be 51 days from the declaration of the poll, *i.e.*, 35 days under s. 33 (1), *plus* 14 days, excluding Sundays (*see* note to sub-sec. 5 below), under this section; or if the last 14 days include only one Sunday, then the limit will be 50 days. Time, how
computed.

The time does not begin to run until the return of the election has been made to the Clerk of the Crown—in Ireland, the Clerk of the Crown and Hanaper)—*i.e.*, has come to his hands, so that he can act upon it; therefore, if it be left at his office late on one evening after business hours, the time will not begin to run till the next morning (*Hurdle v. Waring* (Poole case), L. R. 9 C. P. 435).

But in any case it would be usual, in computing the time from which the days begin to run, to exclude the day on which the return was received, the rule being (as laid down by Sir W. Grant in *Lester v. Garland*, 15 Ves. 248, and acted upon in *Hardy v. Ryle*, 9 B. & C. 608), that, where the act

Sec. 40. — done from which the computation is made is one to which the party against whom the time runs is privy, the day of the act done may reasonably be included; but where it is one to which he is a stranger, it ought to be excluded.

The present sub-section, however, is quite explicit in fixing the time at 14 days "*after* the day on which the returning officer receives the return."

Presentation of the petition is to be made by delivering it to the prescribed officer. P. E. Act, 1868, s. 6 (3), and Rules 1, 9, &c.

(d) "*If the election petition,*" &c.—This clause is substantially the same as s. 6 (2) of the P. E. Act, 1868, Appendix, p. 352, and its effect appears to be considerably to extend the period within which an election petition containing the specified allegations may be presented, for it allows "28 days after the payment or other act" complained of; and as most of the acts made illegal by this Act are so, whether done "before, during, or after the election," and no definite period after the election is named within which, to be illegal, they must be done, it is submitted that a petition based upon any such act, done within a reasonable period after the return of the election expenses, will be valid if presented within the 28 days hereby allowed.

(e) "*In pursuance or in furtherance of,*" &c.—These words appear designed to cover the providing of money for replacing money illegally expended, which under s. 13 constitutes an illegal payment, and by s. 21 (2), if provided by a candidate or his election agent, becomes an illegal practice.

(2.) Any election petition presented within the time limited (f) by the Parliamentary Elections Act, 1868, may, for the purpose of questioning the return or the election upon an allegation of an illegal practice, be amended with the leave of the High Court within the time within which a petition questioning the return upon the allegation of that illegal practice can under this section be presented.

Sec. 40.

Amendment of
Petition.

(f) "*Within the time limited,*" i.e., 21 days after the return (i.e., working days, for Sundays are excluded, *Pease v. Norwood* (Hull case), L. R. 4 C. P. 235, at p. 238); or, if alleging corrupt practices, and payments in pursuance thereof since the return of the poll, 28 days after such payment (31 & 32 Vic. c. 125, s. 6, App. p. 352).

The effect of this sub-section, then, is to permit of the amending of a petition alleging corrupt practices, and therefore presented within the time limited by the P. E. Act, 1868, by adding allegations of illegal practices at any time within the period fixed by sub-sec. 1. (See as to the former practice in this particular, *Maude v. Lowley*, L. R. 9 C. P. 165, decided under the M. C. Act, 1872; and *Aldridge v. Hurst*, 1 C. P. D. 410).

(3.) This section shall apply in the case of an offence relating to the return (g) and declarations respecting election expenses in like manner as if it were an illegal practice, and also shall apply notwithstanding that the act constituting the alleged illegal practice amounted to a corrupt practice.

Petitions as to
offences
relating to
return, &c., of
expenses.

(g) "*An offence relating to the return.*"—See s. 33, contraventions of which are declared to be illegal practices (sub-sec. 6), except in the case of a false declaration, which is perjury, and is to be deemed a corrupt practice. For the purposes of this section it is to be treated as an illegal practice; but otherwise, where a petition is based on allegations of corrupt

Sec. 40. practices, the date of its presentation, &c., will continue to be regulated by s. 6 of the Parliamentary Elections Act, 1868.

Where dates of return and declarations, authorised excuse, &c., differ.

(4.) For the purposes of this section—

- (a) where the return and declarations are received on different days, (h) the day on which the last of them is received, and
- (b) where there is an authorised excuse for failing to make and transmit the return and declarations respecting election expenses, the date of the allowance of the excuse, (i) or if there was a failure as regards two or more of them, (k) and the excuse was allowed at different times, the date of the allowance of the last excuse,

shall be substituted for the day on which the return and declarations are received by the returning officer.

(h) "*On different days*," i.e., where the agent transmits his return and declaration on one date, and the candidate, owing to absence from the United Kingdom, has the benefit of a further extension of time (s. 33, sub-secs. 4 & 8).

(i) "*Date of the allowance of the excuse*."—See s. 34 (4), *supra*, p. 197.

(k) "*As regards two or more of them*."—Thus, if the agent and candidate failed to transmit their declarations in time, and obtained an allowance of the excuse at different times; or if the agent alone failed, and obtained the same. As to the grounds on which the excuse will be allowed, &c., see s. 34.

Time, how reckoned under this section.

(5.) For the purposes of this section, time shall be reckoned (l) in like manner as it is reckoned for the purposes of the Parliamentary Elections Act, 1868.

(l) "*Time shall be reckoned, &c.*"—Section 49 of the Parliamentary Elections Act, 1868, enacts that "in reckoning time for the purposes of this Act, "Sunday, Christmas Day, Good Friday, and any day

“set apart for a public fast or public thanksgiving, Secs. 40, 41.
 “shall be excluded,” and this provision has been held
 to exclude as well the *intermediate* Sundays, as the
 first or last (*pr.* Willes J., in *Southampton*, 1 O. & H.
 223). In other cases, *e.g.*, the reckoning of the 35
 days within which the election expenses are to be
 returned (s. 33), this provision does not take effect.

41. (1.) Before leave for the withdrawal (a) of an election Withdrawal
 petition is granted, there shall be produced affidavits by all of election
 the parties (b) to the petition and their solicitors (c), and by petition.
 the election agents of all of the said parties who were candi-
 dates at the election, but the High Court (d) may on cause
 shown dispense with the affidavit (e) of any particular person
 if it seems to the Court on special grounds to be just so to do.

No election petition can be withdrawn without affidavits by all the parties thereto, and all their solicitors and election agents (unless the High Court think fit to dispense with any one), showing that such withdrawal was not due to any improper agreement or terms, &c., and stating, in the case of the applicant and his solicitor, the grounds for withdrawal (sub-secs. 1, 2, 3, 8, & 9). The withdrawal may be opposed by the Public Prosecutor (sub-sec. 5); and if the Court consider it to be the result of arrangements prohibited by this section, it may impound the petitioner's security (sub-sec. 6). Any arrangements made in contravention of this section render the parties guilty of a misdemeanour and punishable with imprisonment and fine (sub-sec. 4). The Court must report to the Speaker the circumstances attending the withdrawal (sub-sec. 7).

(a) “*Withdrawal.*”—An Election Petition can only be withdrawn by leave of the full Court (*i.e.*, the two election Judges, 42 & 43 Vic. c. 75, s. 2), upon

Sec. 41. — special application to be made in and at the prescribed manner, time, and place. And no such application can be made until the prescribed notice has been given in the county or borough. (P. E. Act 1868, s. 35, and Rules 45, 46, 47 & 49); and on the hearing of the application for withdrawal, any person who might have been petitioner may apply to be substituted, and may be substituted if the Court think fit for the party or parties withdrawing (*ib.*).

Parties to a
Petition—
Petitioners.

(b) "*All the parties.*"—(A.) *The Petitioners.*—A petition may be presented by any one or more of the following persons :

(1.) Some person who voted or who had a right to vote at the election to which the petition relates, *i.e.*, he must be legally entitled to vote, whether, in fact, he did so or not, and if he voted, not having the right to do so, he would be disqualified for presenting a petition.

An elector who voted for the sitting member may also petition against him, unless he voted for him *after* he became aware of his corrupt or illegal practices, in which case, *semble*, he would be stopped from petitioning (*Herefordshire*, 1 Peck. 210). But it may be doubted whether this precedent would be followed in the face of Rule 60, which provides that "no proceeding under the P. E. Act, 1868, shall be defeated by any formal objection"; *cp. Shrewsbury*, (19 L. T. 499), where Martin, B., refused to allow respondents to take advantage of the fact that the returning officer, though a respondent, had no notice, to which he was entitled under s. 8. Where there are more petitioners than one, the application

to withdraw can only be made with the consent of all of them (*ib.* s. 35). Sec. 41.
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(2.) Some persons claiming to have had a right to be returned or elected at such election. This points to the case of a candidate petitioning against the return of his opponent, and claiming the seat for himself.

(3.) Some person alleging himself to have been a candidate at such election, and therefore not claiming it for himself. See the definition of "a Candidate at an Election," s. 63.

The petitioner must be prepared to prove that he was not only *de facto*, but also *de jure*, a candidate, although it is sufficient to allege the fact in his petition.

In *Drinkwater v. Deakin*, re *Launceston Election* (L. R. 9 C. P. 626), it was held that, though bribery at the election disqualifies a person from being elected, it does not disqualify him from being a candidate. Therefore, although an elector would on that account be disqualified from petitioning, a candidate would not be.

(B.) "*The Respondents.*"—The respondents to a petition will be, in the first instance, the person or persons whose return is complained of. But under certain circumstances, as, if the respondent dies (*Tipperary* 3 O. & H. 19), or is raised to the peerage, &c. (P. E. Act, 1868, s. 38, Rule 51), any persons, not exceeding three in number, entitled to be petitioners, may be substituted as respondents (*ib.*); and so a person who claims to have been elected and acts as such may also be made a respondent (*Yates v. Leach*, L. R. 9 C. P. 605, a Municipal Election decided

Sec. 41. — under s. 18 of M. C. Act, 1872). Moreover, by s. 51 of the P. E. Act, 1868, “where an election petition “complains of the conduct of a returning officer, he “shall, for all the purposes of the Act, except the “admission of respondents in his place, be deemed “to be respondent.” For the general practice in reference to proceedings in connection with election petitions, *see* Petition Rules (*vide* note on p. 358).

(c) “*And their Solicitors.*”—*See* further sub-secs., 8 & 9, below.

(d) “*The High Court,*” *i.e.*, one of the Election Judges for the time being (s. 56, sub-s. 1). This and other interlocutory proceedings may be dealt with by a single Judge sitting either in Court or at chambers (*ib.*).

(e) “*Dispense with the Affidavit.*”—Affidavits, from some at least of the parties, will apparently now be a *sine qua non*, as copies are to be sent to the Public Prosecutor (sub-sec. 5 below); but in some cases *viva voce* evidence has been allowed, if given in open Court. Thus, in *N. Durham* (3 O. & H. 4), Grove, J., said: “I must have the usual affidavits, or, if you like, you can do it by witnesses, as was done in the *Brecon* case (2 O. & H. 33, *cp. Hartlepool*, 19 L. T. 821), but in this case the whole business must be transacted in open Court.” *See* form of affidavit in App., p. 439.

Contents of
affidavits on
motion for
withdrawal.

(2.) Each affidavit shall state that, to the best of the deponent's knowledge and belief, no agreement or terms of any kind whatsoever has or have been made, and no undertaking has been entered into, in relation to the withdrawal of the petition; but if any lawful agreement has been made with respect to the withdrawal of the petition, the affidavit shall set forth that agreement, and shall make the foregoing statement subject to what appears from the affidavit.

(3.) The affidavits of the applicant and his solicitor shall further state the ground on which the petition is sought to be withdrawn.

Sec. 41.

(4.) If any person makes any agreement or terms, (f) or enters into any undertaking, in relation to the withdrawal of an election petition, and such agreement, terms, or undertaking is or are for the withdrawal of the election petition in consideration of any payment, (g) or in consideration that the seat shall at any time be vacated, or in consideration of the withdrawal of any other election petition, or is or are (whether lawful or unlawful) not mentioned in the aforesaid affidavits, he shall be guilty of a misdemeanour, and shall be liable on conviction on indictment (h) to imprisonment for a term not exceeding twelve months, and to a fine not exceeding two hundred pounds.

Punishment of party convicted of corrupt withdrawal.

(f) "*Any agreement or terms.*"—This is sufficiently general to cover every case, and so an agreement to withdraw one petition in consideration of the non-presentation of another would be corrupt.

(g) "*Any payment*" includes any pecuniary or other reward (s. 64, p. 292).

(h) "*On conviction on indictment.*"—This offence is, in respect of the severity of the punishment inflicted, placed on a level with corrupt practices, and being indictable, will, it is submitted, not be triable at Quarter Sessions, under s. 53 (1).

(5.) Copies of the said affidavits shall be delivered to the Director of Public Prosecutions (i) a reasonable time before the application for the withdrawal (k) is heard, and the Court may hear the Director of Public Prosecutions or his assistant or other representative (appointed with the approval of the Attorney-General), in opposition to the allowance of the withdrawal of the petition, and shall have power to receive the evidence on oath of any person or persons whose evidence the Director of Public Prosecutions or his assistant or other representative may consider material.

Affidavits to be sent to Public Prosecutor.

(i) "*The Director of Public Prosecutions.*"—See s. 57.

(k) "*Application for the withdrawal.*"—Special application must be made in and at the prescribed

Sec. 41. — manner, time and place; and no such application shall be made until the prescribed notice has been given in the constituency (P. E. Act, 1868, s. 35, and Petition Rules 45, 48, &c.). Hence, if the requisite notice (viz., of five days) has not been given, the trial will be adjourned for the purpose (*Hartlepool*, 19 L. T. 821); but where no evidence in support of the petition is offered, no adjournment is necessary, the petition being dismissed (*Brecon*, 2 O. & H. 33; *Gloucester*, 3 *ib.* 72). Similarly, as to withdrawal of part of the petition (*Aldridge v. Hurst*, L. R. 1 C. P. D. 410).

Orders of Court
as to the
security.

31 & 32 Vic. c.
125.

(6.) Where in the opinion of the Court the proposed withdrawal of a petition was the result of any agreement, terms or undertaking prohibited by this section, the Court shall have the same power (l) with respect to the security as under section thirty-five of the Parliamentary Elections Act, 1868, where the withdrawal is induced by a corrupt consideration.

(l) “*The same power.*”—The P. E. Act, 1868, provides (s. 35) that the Court may, if it think fit, if the proposed withdrawal appears induced by any corrupt bargain or consideration, “by order direct “that the security given on behalf of the original “petitioner shall remain as security for any costs “that may be incurred by the substituted petitioner, “and that to the extent of the sum named in such “security the original petitioner shall be liable to “pay the costs of the substituted petitioner.” And “if a petition is withdrawn, the petitioner shall be “liable to pay the costs of the respondent.”

The security is limited to the sum of £1,000 (P. E. Act, 1868, s. 6, sub-sec. 5; nor can a larger sum in any case be required (*Pease v. Norwood*, L. R. 4 C. P. 235); and if given by recognisance, one surety is sufficient, the Act requiring that such recognisance

be entered into by *any number of sureties not exceeding four* (*Hereford*, 49 L. J. 686). Sec. 41.
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(7.) In every case of the withdrawal (*m*) of an election petition the Court shall report to the Speaker whether, in the opinion of such Court, the withdrawal of such petition was the result of any agreement, terms, or undertaking, or was in consideration of any payment, or in consideration that the seat should at any time be vacated, or in consideration of the withdrawal of any other election petition, or for any other consideration, and if so, shall state the circumstances attending the withdrawal.

Court to report to Speaker causes of withdrawal.

(*m*) "*In every case of the withdrawal,*" &c.—The Court have no direct power to prevent the withdrawal of a petition. Their duty appears by this section to be confined to reporting to the Speaker the circumstances under which the petition was withdrawn. "There might possibly be cases in which a Judge would not allow a petition to be withdrawn, and would, as far as he could, use his power to prevent it. He might, for instance, exercise the power which is given him of recommending the Court not to allow the deposit to be withdrawn without considerable explanation. The task, no doubt, would be an extremely difficult one, and the mode in which a Judge is to compel parties to go on with a petition which they have determined to withdraw remains to be discovered" (*pr. Grove, J., N. Durham*, 3 O. & H. 2). "The Judges' functions are over as soon as the petition is decided, which is done if the defence is abandoned; and we cannot go in the absence of the petitioners, and we have no right to insist on and allow of the respondents calling witnesses afterwards merely for exculpation" (*Knaresborough*, 3 O. & H. 142). But a respondent may be called to exonerate himself after the inquiry is closed (*ib.*, *cp. Norwich, ib.* 16; *Boston, ib.* 150).

The Court cannot directly prevent a withdrawal.

Secs. 41, 42. And so, where the respondent admitted that there had been so much general treating that the election must be avoided at common law, Lush, L. J., said he had not the means of pursuing any further inquiry (*St. Ives, ib.*, 13). And the power given to the Court by s. 35 of the P. E. Act, 1868, to deal with the security, will act as a check upon improper transactions in this connection. Probably, too, the fear of a Commission of Inquiry as the result of such withdrawal would exercise an equal influence in the same direction.*

Solicitors and
Parliamentary
agents.

(8.) Where more than one solicitor is concerned for the petitioner or respondent, whether as agent for another solicitor or otherwise, the affidavit shall be made by all such solicitors.

(9.) Where a person not a solicitor (*n*) is lawfully acting as agent in the case of an election petition, that agent shall be deemed to be a solicitor for the purpose of making an affidavit in pursuance of this section.

(*n*) "*A person not a solicitor*," *i.e.*, a Parliamentary agent. See P. E. Act, 1868, s. 57.

Continuation
of trial of
election
petition.

42. The trial of every election petition so far as is practicable, consistently with the interests of justice in respect of such trial, shall be continued *de die in diem* on every lawful day (*o*) until its conclusion, (*p*) and in case the rota (*r*) of Judges for the year shall expire before the conclusion of the trial, or of all the proceedings in relation or incidental to the petition, the authority of the said Judges shall continue for the purpose of the said trial and proceedings.

This section is apparently intended to modify s. 11 (12) of the P. E. Act, 1868, which allowed the Court to adjourn the trial from time to time, &c.

(*o*) "*On every lawful day*."—*Op.* s. 49 of the P. E. Act, 1868, App. p. 364.

Effect of dis-
solution or
prorogation of
Parliament
on petition.

(*p*) "*Until its conclusion*," *i.e.*, until the Judges give their decision. The dissolution of Parliament puts an end to a petition (*Carter v. Mills*, 9 L. R. C. P.

* The Judges may also make a special report, as in the *Gloucester case*, 3 O. & H. 37.

117). But where the dissolution did not take place till after the Judges had given their decision, the petitioner was allowed his costs, although the Judges' certificate had not reached the Speaker (*Marshall v. James*, 9 L. R. C. P. 702); but the trial is to be proceeded with notwithstanding the prorogation of Parliament (P. E. Act, 1868, s. 19). Secs. 42, 43.

A petition is also abated by the death of a sole petitioner or of the survivor of several petitioners, but not by the death of a respondent (P. E. Act, 1868, s. 37; *Tipperary*, 3 O. & H. 20).

Nor does the acceptance by the respondent of an office of profit under the Crown abate the petition (P. E. Act, s. 18). And where he has been raised to the peerage, another person may be substituted in his place (*ib.* s. 38).

(r) "*The rota.*"—See P. E. Act, 1868, s. 11, and s. 13 of the Supreme Court of Judicature Act, 1881, which is to the same effect as the last clause of this section.

43. (1.) On every trial of an election petition the Director of Public Prosecutions (a) shall by himself or by his assistant, or by such representative as hereinafter mentioned, (b) attend at the trial, and it shall be the duty of such Director to obey any directions given to him by the Election Court with respect to the summoning and examination of any witness to give evidence on such trial, and with respect to the prosecution by him of offenders, and with respect to any person to whom notice is given to attend with a view to report him as guilty of any corrupt or illegal practice.

Attendance of Director of public prosecutions on trial of election petition, and prosecution by him of offenders.

This section provides a machinery for the speedy and summary prosecution and punishment of offenders against the Act, before the Election Court.

(1.) The Public Prosecutor, or his representatives, is directed to attend every trial, and obey the direc-

Sec. 43. tions of the Court, or himself take the initiative, in
 — (a) summoning and examining witnesses and (b) prosecuting offenders (sub-secs. 1-3).

(2.) Persons accused of corrupt or illegal practices may either (i.) be tried summarily before the Election Court, which has power to impose six months' imprisonment, with or without hard labour, or fines up to £200; or (ii.) be committed for trial (if the offence be indictable), or remitted for trial to a Court of summary jurisdiction. In the case of a corrupt practice, the accused must always be given the option of being tried by a jury. The Court has, moreover, power to issue a summons or warrant for the arrest of persons not present before the Court (sub-secs. 4-6).

(3.) The Public Prosecutor may nominate a representative to take his place, and, lastly, provision is made for defraying the costs of such public prosecutions (sub-sec. 7 & 8).

This section does not apply to Scotland, s. 68 (3).

Functions of
the public
prosecutor.

(a) "*Director of Public Prosecutions.*"—This officer is appointed by a Secretary of State. It is his duty, under the superintendence of the Attorney-General, to institute, undertake, or carry on such criminal proceedings, &c., as may be for the time being prescribed by regulations under the Prosecution of Offences Act, 1879, or may be directed in a special case by the Attorney-General. The regulations* under this Act shall provide for the Director taking action in cases which appear to be of importance or

* These regulations were drafted in 1880, but were not published until last year, when they were issued as a Parliamentary Paper, No. 177, 1883.

Sec. 43.
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difficulty, or in which special circumstances, or the refusal or failure of a person to proceed with a prosecution, appear to render the action of such Director necessary (s. 2). Assistants to the number of six may be appointed, who, as well as the Director himself, shall be either barristers or solicitors of the Supreme Court of Judicature (in the case of the Director) in actual practice and of not less standing than 10 years, and (in case of an assistant) in actual practice and of not less standing than seven years; but in neither case shall they, directly or indirectly, practice in their profession except in discharge of their duties under this Act (s. 3).

But nothing in the Act is to interfere with the right of any person to institute, undertake, or carry on any criminal proceedings (s. 7), and if the Director abandons a prosecution the aggrieved parties may proceed (s. 6).

In Ireland the Attorney-General for Ireland is to be substituted for the Public Prosecutor, s. 69 (8); and in Scotland the authority given by this Act to the Public Prosecutor is to be exercised by Her Majesty's Advocate, s. 68 (7).

(b) "*As hereinafter mentioned.*"—Sub-sec. 7 below.

(2.) It shall also be the duty of such Director, without any direction (c) from the Election Court, if it appears to him that any person is able to give material evidence as to the subject of the trial, to cause such person to attend the trial, and with the leave of the Court (d) to examine such person as a witness.

Public
Prosecutor to
summon and
examine
witnesses,

(c) "*Without any direction,*" e.g., where information has been given to him upon which he has acted, under s. 45; or where he is proceeding under the orders of the Attorney-General, under s. 57.

(d) "*With the leave of the Court.*"—Sec. 59 enacts

Sec. 43.

that where a witness answers truly all the questions required of him he "shall be entitled to a certificate of indemnity." As no discretion is thus given to the Court for withholding such certificate, it may be deemed most expedient in the interests of justice, in very flagrant cases, not to give the offender any such chance of escape by putting him in the witness-box. He would then be put upon his trial at once before the Election Court under s. 4, unless, in the case of a corrupt practice, he elected to be tried by a jury.

and prosecute
persons who
have received
no certificate.

(3.) It shall also be the duty of the said Director, without any direction from the Election Court, if it appears to him that any person who has not received a certificate of indemnity (e) has been guilty of a corrupt or illegal practice (f) to prosecute such person for the offence before the said Court, or if he thinks it expedient in the interests of justice, before any other competent Court.

(e) "*Certificate of Indemnity.*"—See s. 59.

(f) "*Corrupt or Illegal Practice.*"—If it be the former offence, the accused must be allowed a trial by jury if he pleases; if the latter, the trial will proceed at once, according to the practice under the Summary Jurisdiction Acts (s. 55, sub-sec. 1), unless the Director or the Court (sub-sec. 5) prefers to conduct it before some other competent Court, i.e., Assizes, or the Central Criminal Court, or at the Royal Courts with a special jury (s. 50). Quarter Sessions are not a competent Court for the trial of corrupt practices (s. 53, sub-sec. 1). Illegal practices will include those offences by candidates or election agents which, in other persons, are only cases of illegal payment, &c. (see s. 21). The latter are not to be dealt with under this section, but they will, in the discretion of the Court, either be tried at once

summarily, or be sent for trial before a Court of summary jurisdiction (sub-sec. 5, below). Sec 43.

(4.) Where a person is prosecuted before an Election Court for any corrupt or illegal practice, and such person appears before the Court, the Court shall proceed to try him summarily for the said offence, and such person, if convicted thereof upon such trial, shall be subject to the same incapacities (g) as he is rendered subject to under this Act upon conviction, whether on indictment or in any other proceeding for the said offence; and further, may be adjudged by the Court, if the offence is a corrupt practice, to be imprisoned, with or without hard labour, for a term not exceeding six months, or to pay a fine not exceeding two hundred pounds, and if the offence is an illegal practice, to pay such fine (h) as is fixed by this Act for the offence; Criminal proceedings before Election Court.

Provided that, in the case of a corrupt practice, the Court, before proceeding to try summarily any person, shall give such person the option of being tried by a jury.

(5.) Where a person is so prosecuted for any such offence, and either he elects to be tried by a jury or he does not appear before the Court, or the Court thinks it in the interests of justice expedient that he should be tried before some other Court, the Court, if of opinion that the evidence is sufficient to put the said person upon his trial for the offence, shall order such person to be prosecuted on indictment, or before a Court of summary jurisdiction, as the case may require, for the said offence; and in either case may order him to be prosecuted before such Court as may be named in the order; and for all purposes preliminary and of and (i) incidental to such prosecution the offence shall be deemed to have been committed within the jurisdiction of the Court so named.

(g) "*Same incapacities.*"—See secs. 6 & 10. But although the incapacities to be imposed by the Election Court are the same, the severity of the punishment is far less than in the case of a person who either of his own choice is committed for trial, or, in the discretion of the Court or of the Public Prosecutor, is sent for trial elsewhere. (See s. 6, sub-ss. 1 & 2). The intention is, probably, that this difference will offer some inducement to the

Sec. 43. — offenders to prefer the more speedy and summary trial before the Election Court, from which, however, there is no appeal (s. 55, sub-s. 1).

(h) “*To pay such fine, &c.*”—The punishment for an illegal practice is limited to a fine not exceeding £100 (s. 10).

(i) “*Preliminary and of and.*”—The draughtsman of the Act has apparently here become slightly entangled with his prepositions. The “of” should clearly follow closely upon “purposes”; and the whole would then run, “for all purposes of and preliminary and incidental to such prosecution.”

Without a proviso to the above effect, the defendant might take advantage of the fact that the offence had not been committed within the jurisdiction of the Court under the general issue; or move in arrest of judgment, or bring a writ of error (Archbold, p. 184).

Orders of Court
as to trial of
offenders.

(6.) Upon such order being made,

- (a) If the accused person is present before the Court, and the offence is an indictable offence, the Court shall commit him to take his trial, or cause him to give bail to appear and take his trial for the said offence; and
- (b) If the accused person is present before the Court, and the offence is not an indictable offence, the Court shall order him to be brought before the Court of summary jurisdiction before whom he is to be prosecuted, or cause him to give bail to appear before that Court; and
- (c) If the accused person is not present before the Court, the Court shall, as circumstances require, issue a summons for his attendance, or a warrant to apprehend him, and bring him before a Court of summary jurisdiction, and that Court, if the offence is an indictable offence, shall, on proof only of the summons or warrant and the identity of the accused, commit him to take his trial, or cause him

to give bail to appear and take his trial for the said offence, or if the offence is punishable on summary conviction, shall proceed to hear the case, or if such Court be not the Court before whom he is directed to be prosecuted, shall order him to be brought before that Court.

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(7.) The Director of Public Prosecutions may nominate, with the approval of the Attorney-General, a barrister or solicitor of not less than ten years' standing to be his representative for the purpose of this section, and that representative shall receive such remuneration as the Commissioners of Her Majesty's Treasury may approve. There shall be allowed to the Director and his assistant or representative, for the purposes of this section, such allowance for expenses as the Commissioners of Her Majesty's Treasury may approve.

Assistant
Public
Prosecutor.

(8.) The costs incurred in defraying (k) the expenses of the Director of Public Prosecutions under this section (including the remuneration of his representative) shall, in the first instance, be paid by the Commissioners of Her Majesty's Treasury, and so far as they are not, in the case of any prosecution, paid by the defendant, shall be deemed to be expenses of the Election Court; but if for any reasonable cause it seems just to the Court so to do, the Court shall order all or part of the said costs to be repaid to the Commissioners of Her Majesty's Treasury by the parties to the petition, or such of them as the Court may direct.

Expenses of
Public
Prosecutor.

(k) "*The costs incurred in defraying.*"—This will mean only the "costs, charges and expenses" (s. 64) necessitated by his attendance at the Election Court, viz., his travelling and other expenses; not "the costs of any prosecution on indictment for any offence punishable under this Act," which are provided for in s. 57 (2). Under the present section, the costs therein mentioned are—in the case of prosecutions (the costs of the election petition itself being dealt with in the following s. 44)—if not paid by the defendant, "to be deemed to be expenses of the Election Court," which, under s. 28 of the P. E. Act, 1868, are to be "defrayed by the Commissioners of the Treasury out of money to be provided by

Secs. 43, 44. Parliament." If all or any of the parties to the petition are involved in transactions out of which prosecutions arise at the hearing of the petition, they may be ordered to pay the above costs.

Power to
Election Court
to order pay-
ment by county
or borough, or
individual,
of costs of
election
petition.

44.—(1.) Where upon the trial of an election petition respecting an election for a county or borough it appears to the Election Court that a corrupt practice has not been proved to have been committed in reference to such election by or with the knowledge and consent of the respondent to the petition, and that such respondent took all reasonable means to prevent corrupt practices being committed on his behalf, the Court (a) may make one or more orders with respect to the payment either of the whole or such part of the costs of the petition as the Court may think right as follows :

- (a) If it appears to the Court that corrupt practices extensively prevailed in reference to the said election, the Court may order the whole or part of the costs to be paid by the county or borough ; and
- (b) If it appears to the Court that any person or persons is or are proved, whether by providing money or otherwise, to have been extensively engaged in corrupt practices, or to have encouraged or promoted extensive corrupt practices in reference to such election, the Court may, after giving such person or persons an opportunity of being heard by counsel (b) or solicitor and examining and cross-examining witnesses to show cause why the order should not be made, order the whole or part of the costs to be paid by that person, or those persons or any of them, and may order that if the costs cannot be recovered from one or more of such persons, they shall be paid by some other of such persons or by either of the parties to the petition.

Where, as the result of a petition, the respondent is proved to be personally innocent, and to have taken all reasonable means to prevent corrupt practices, the Court may order the whole or part of the costs to be paid either (a) by the constituency,

if corrupt practices have extensively prevailed, or (b) by any person or persons who have been extensively engaged in, or have encouraged or promoted the same. But in the latter case, such persons are to have an opportunity of being heard in self-defence by counsel. Where any one is proved to have been guilty of a corrupt or illegal practice, he may be fixed with the costs incidental thereto, after having an opportunity of "making a statement" in self-defence. The Rules of the Supreme Court of Judicature, so far as applicable, are to apply in respect of costs.

Sec. 44.
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Provision is made by s. 58 for the recovery on the part of the Crown of costs (other than costs of a prosecution on indictment) payable either by the constituency or by individuals. And s. 57 (2) enacts that the costs of any prosecution on indictment shall, so far as they are not paid by the defendant, be paid as in prosecutions for felony.

(a) "*The Court*," i.e., the Election Court, not the High Court. So that questions as to costs must in all cases be decided by the two Election Judges (*see* s. 64 p. 287).

(b) "*By Counsel*."—*See* note to s. 38 (1); notice will be given for the attendance of the party concerned, and for the service of notice in such a case, s. 62 (2).

(2.) Where any person appears to the Court to have been guilty of the offence of a corrupt or illegal practice, the Court may, after giving such person an opportunity of making a statement (c) to show why the order should not be made, order the whole or any part of the costs of or incidental to any proceedings before the Court in relation to the said offence or to the said person to be paid by the said person.

Offenders may be ordered to pay costs occasioned by their malpractices.

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(c) "*Making a Statement.*"—There is often as much fighting over the mere question of costs as over the whole of the matter at issue. And, as the costs in election petitions are not usually small, the proceedings under this section are not likely to prove any exception to the rule. On the inquiry as to the incidence of the costs of the whole petition, where a party has been mixed up in extensive corruption, counsel, solicitors and witnesses may be employed; but where a person appears to have been guilty of a corrupt or illegal practice, and nothing more, he may only make a statement to show why he should not be made to pay the costs incidental to his misconduct. It will be observed that the expression used in this section is "if it appears to the Court," not "if he be found guilty on indictment" or the like. In the latter case, he would be liable to be fixed with a double set of costs, those directly connected with the hearing of the petition, and those arising out of the criminal prosecution. But even without being either reported or prosecuted, and though he may receive his certificate of indemnity, the guilty party will still be liable under this section to be burdened with heavy costs.

R. S. C. as to
costs to apply to
election
petitions.

(3.) The rules and regulations of the Supreme Court of Judicature with respect to costs (d) to be allowed in actions, causes, and matters in the High Court shall in principle and so far as practicable apply to the costs of petition and other proceedings (e) under the Parliamentary Elections Act, 1868, and under this Act, and the taxing officer shall not allow (f) any costs, charges, or expenses on a higher scale than would be allowed in any action, cause, or matter in the High Court on the higher scale, as between solicitor and client.

(d) "*Costs.*"—The general principle under the Rules of the Supreme Court is that costs shall be

in the discretion of the Court or Judge, which discretion is in general absolute. But the plaintiff enforcing a legal right without misconduct, is entitled to his costs (*Cooper v. Whittingham* 15 Ch. D. 501); and a successful defendant cannot be ordered to pay the plaintiffs' costs of the action (*Foster v. G. W. Railway Co.*, 8 Q. B. D. 515; *cp. Lely & Foulkes' Judicature Acts*, 1883, p. 374, and R. S. C., 1883, Order lxv., Rule 9, &c.).

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Section 41 of the P. E. Act, 1868, leaves the awarding of costs, with the exception of those by that Act otherwise provided for,* also in the discretion of the Court, with the suggestion "regard being had to the disallowance of any costs, charges, or expenses which may have been caused by vexatious conduct, unfounded allegations or unfounded objections" on either side, and "regard being had to the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused," whether on the whole successful or not.

The present sub-section declares that the R. S. C. with respect to costs shall, so far as practicable, apply to proceedings under the P. E. Act, 1868, and this Act. Hence the rule that "Costs follow the event" will usually be followed; unless for any of the reasons stated in s. 41 of the P. E. Act above, a deviation therefrom is deemed just. Thus, costs have been

General rule that "costs follow the event."

* Namely (i.)—for the travelling and other expenses of the Judge and for the attendance on him (ss. 28, 30); (ii.) expenses of witnesses provided for by s. 34; (iii.) Petitioner to pay respondent's costs, if petition withdrawn (s. 35); (iv.) The costs of publication by the town clerk are to be paid in the first instance by the petitioner, but are to form part of the general costs (Rule 12); (v.) Costs of objections to the security also form part of the general costs, unless otherwise ordered by the Master or Judge (Rule 27).

Sec. 44. refused to the successful party in the following cases :—

A.—Where petitioner was successful :—

Exceptions in
favour of
respondent.

- (1.) Where as many as 184 charges were made in the particulars delivered, but evidence was only offered on 5, which came to nothing (*Hereford*, 1 O. & H., 197; *cp. Youghal*, *ib.* 295; *Blackburn*, *ib.* 205; *Longford*, 2 *ib.* 17; *Norwich*, *ib.* 42). So in the *Wallingford* case (1 O. & H. 60), Lord Blackburn said: "That in consequence of the petitioner's attorney not having properly prepared the case, and so having caused waste of time, he would not allow his costs;" but eventually the petition failed, and the costs followed the event.
- (2.) Where, although the petition was successful, the recriminatory case also succeeded (*Stafford*, 1 O. & H. 234); where as "each side has been successful, and each side has failed, I shall not saddle either with the costs of the other" (*pr.* Lord Blackburn, *Westbury*, *ib.* 56; *Petersfield*, 2 O. & H. 99).
- (3.) Where, though respondent unseated, petitioner failed in his claim to seat (*Wexford*, 1 R. 3 C. L. 614; *Norwich*, 1 O. & H. 12; *Gravesend*, 3 O. & H. 82).
- (4.) Where personal charges made against respondents have failed (*Blackburn*, 1 O. & H. 205; *Westbury*, *ib.* 56; *Poole*, 2 O. & H. 124; *Longford*, *ib.* 17). "No

personal imputation should be made in a petition unless there be some very good grounds to support it; and if not substantiated, the petitioner must bear the costs."

(*pr. Hawkins, J., Tewkesbury, 3 O. & H. 99, cp. Canterbury, ib. 105, Salisbury, ib. 131*).

- (5.) Where general allegations of bribery have not been proved (*Petersfield, 2 O. & H. 95, 99; Plymouth, 3 ib. 112*).
- (6.) Where respondent has exerted himself to prevent corruption (*Stafford, 1 O. & H. 234; Norwich, ubi sup.*).
- (7.) Where petitioners are mere men of straw (*Poole, 2 O. & H. 128, called by Grove, J. "a fishing petition"*), but *secus* when petition well-founded (*Wigan, 4 O. & H. 15*).
- (8.) Where petitioner or his supporters have themselves been party to improper proceedings (*Dudley, 2 O. & H. 122; Longford, ib. 17; Sandwich, 3 ib. 160, in which case, the petitioner's agents withheld the expenses*).
- (9.) Where neither party apply for costs (*Lichfield, 1 O. & H. 29; N. Durham, 3 O. & H. 3; Gloucester, 3 ib. 74*).
- (10.) In other cases, a successful petitioner has, for various reasons, been ordered to pay part of the costs, *e.g.*, *Gravesend, 3 O. & H. 85; Stroud, ib. 12; Pewdley, ib. 147; Kidderminster, 2 ib. 178; Waterford, 2 ib. 5* (costs of witnesses subpoenaed but not examined, disallowed).

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In favour of
petitioner.

(B.) — *Where Respondent was successful.* — The general rule is that, although a petition is neither frivolous nor vexatious, yet, if it fails, and there are no special circumstances to displace the general rule, the petitioner must pay the respondent's costs (*pr. Willes, J., Windsor, 1 O. & H. 7*). But

- (1.) Wherever "the case as disclosed under the petition is proper for examination, and the petition is founded on strong *prima facie* grounds, and attended with reasonable and probable cause for pursuing the inquiry to a termination, each party must pay his own costs" (*pr. Willes J., Guildford, 1 O. & H. 15; Warrington, ib. 45; Westminster, ib. 96; Coventry, ib. 111; Limerick, ib. 263; Galway, ib. 307; Athlone, ib. 60*).
- (2.) Where the respondent is to blame owing to various circumstances, which, though not sufficient to avoid the election, were illegal (*Carrickfergus, 1 O. & H. 269, and 3 ib. 93; Tamworth* (employment of a voter by respondent's agent), *1 O. & H. 88; South-West Riding* (where voters had been improperly entertained), *ib. 216; Bolton, 2 ib. 150; Stroud, ib. 185; Windsor, ib. 93*.) In the *Down* case (*3 O. & H. 129*), no costs were given, owing to the Court being divided in opinion as to the merits of the case.
- (3.) Where the respondent failed in part of his recriminatory case, though successful on the whole, he was allowed only a por-

tion of his costs (*Berwick*, 3 O. & H. 183; *Londonderry*, 1 *ib.* 280). But in the *Taunton* case (*ib.* 76) the petitioners had to pay for the improper way in which part of the evidence had been collected. Sec. 44.
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(C.)—*Where the Returning Officer is a party.*—Where the petition has been occasioned by any *bona fide* mistake on the part of the returning officer, all the parties will be left to pay their own costs (*Hackney*, 2 O. & H. 77; *Athlone*, *ib.* 190; *Drogheda*, *ib.* 211; *Wigtown*, *ib.* 230); but where there is no personal default of the officer, and the result of the election has not been affected by his mistake, he has not to pay costs (*Woodward v. Sarsons* (a municipal election) L. R. 10, C. P. 738) unless his action was brought about (as in the *Mayo* case, 2 O. & H. 194) by the pressure of one of the parties, who would then be ordered to pay; or unless the parties impeaching his conduct fail to make good their charges, in which case they would have to pay his costs (*Worcester*, 3 O. & H. 186). If the returning officer acted *mala fide*, he would probably be ordered to pay the costs, though the nearest authority on this point is the *Haverfordwest* case (L. R. 9 C. P. 720), where the returning officer refused to accept the nomination of a person because he declined to deposit money or give security for his expenses, and was only exempted from paying costs because the Court disapproved of the conduct of the petitioner in refusing to comply with so usual and reasonable a demand. Costs where re-
turning officer
a party.

(D.)—In case of a scrutiny, the same principles apply. Thus, if there was a *prima facie* case for petitioning, the petitioner would not be ordered to pay Costs of scru-
tiny.

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the respondent's costs (*South-West Riding Yorkshire*, 1 O. & H. 216). But the petitioners had to pay the costs of the whole inquiry at *Oldham* (1 O. & H. 166), where, having themselves brought forward 190 cases and succeeded in 48 only, the respondents brought forward 72, in 42 of which they were successful.

(e) "*And other proceedings.*"—*Op.* Petition Rules 44, as to which see note, *infra*, p. 358.

Costs on the
higher scale.

(f) "*Taxing officer shall not allow.*"—See s. 41 of the P. E. Act, 1868, substantially to the same effect. Costs on "the higher scale" are allowed by order of the Court or a Judge in any cause or matter on special grounds arising out of the nature and importance, or the difficulty or urgency of the case (R. S. C. Order lxx., Rules 9 and 10).

"The party in whose favour an order for costs, as between solicitor and client, is made, is entitled to receive all such costs as a solicitor would reasonably incur in the ordinary conduct of his client's case. . . . But it is not every charge to which the solicitor would be entitled as against his own client which will be allowed by the taxing master. Extraordinary costs will be disallowed, as, for instance, where, by the client's own instructions, an unusual number of counsel were employed, or where the costs were incurred through the party's own default in incurring a contempt" (Morgan and Wurtzburg, p. 4, 5).

Court will not
reverse decision
of taxing master
unless principle
involved.

A very wide discretion must necessarily be left to the taxing master, and the Court will not interfere unless a principle is involved (*pr.* Bovill, C.-J., in *Hill v. Peel*, L. R. 5 C. P. 181. *Op.* *Hughes v. Meyrick* (*Pembroke* case), *ib.*, 407; *Fleming v. Cave* (*Barnstaple*

case), 44 L. J. C. P. 200; *Trench v. Nolan* (County Galway), I. R. 7 C. L. 445). In the latter case it was held—(1) That the petitioner was entitled to be recouped the sums actually paid by him for copies of shorthand writer's notes; (2) That he was entitled to the expenses of witnesses *bond fide* summoned, though not examined; (3) That the registrar's certificate was not necessary to entitle him to the expenses of the witnesses; (4) That he was entitled to the costs of a map of the county; (5) To a retainer of 10 guineas paid to each of two senior counsel; to the fee paid to junior counsel on the hearing of a case reserved; to the costs of proceedings to draw money out of Court; (6) That the master, in exercising his discretion as to the number of counsel, their fees, refreshers, consultations, and the expenses of subpoenas, telegrams, &c., ought to have regard to the difficulty, magnitude and importance of the particular case.

But the parties are not entitled to "any extraordinary or unusual expenses incurred in consequence of over caution or over anxiety as to any particular case, or from consideration of any special importance arising from the rank, position, wealth or character of either of the parties, or any special desire on his part to ensure success" (*pr. Bovill C.-J., Hill v. Peel, ubi. sup.*). And although the amount of the reasonable expenses to be paid to any witness may, under s. 34 of the P. E. Act, 1868, and Rule 5, 1875, be ascertained and certified by the Registrar, his certificate is not conclusive of the amount as between petitioner and respondent; but it is as part of the general costs of the petition, subject under s. 41 to taxation by a

Secs. 44, 45. master, who must exercise his discretion on the expenses certified (*McLaren v. Home, Berwick case*, 7 Q. B. D. 477).

Although a dissolution puts an end to an election petition, yet where it takes place only after the decision has been pronounced and the Judge has signed his certificate and put it in transit to the speaker, it does not affect the right of the respondent to have his costs taxed (*Marshall v. James, Taunton case*, L. R. 9 C. P. 702).

Recognisance,
when estreated.

As to the payment of the security found out of Court, *see* the Additional Petition Rules of 1869. If the petitioner refuses or neglects for six months to pay costs, &c., certified to be due from him, and such refusal be proved within one year after demand for payment, his recognisance will be estreated. (P. E. Act, 1868, s. 42).

Miscellaneous.

Inquiry by
Director of
Public Prosecu-
tions into
alleged corrupt
or illegal
practices.

45. Where information is given to the Director of Public Prosecutions that any corrupt or illegal practices have prevailed in reference to any election, it shall be his duty, subject to the regulations under the Prosecution of Offences Act, 1879, to make such inquiries and institute such prosecutions as the circumstances of the case appear to him to require.

Under this section the Public Prosecutor is required to make inquiries and follow up with a prosecution, if he think it necessary, any information as to corrupt or illegal practices given to him. So that, where otherwise private individuals might have felt it their duty to come forward and prosecute, they will now merely have to lodge such information as they possess with the Public Prosecutor. The present holder of that office is Sir J. B. Maule, Q.C., and his office is situate at No. 34, Spring Gardens.

The right of private prosecution is not taken away. Secs. 45, 46.
See note (a), s. 43 (1), and s. 57 (1). And by s. 60, all the reports by the Court or Commissioners are to be laid before the Attorney-General, that he may prosecute, or direct the Public Prosecutor to prosecute, persons to whom certificates of indemnity have been refused.

46. Where a person has, either before or after the commencement of this Act, (a) become subject to any incapacity under the Corrupt Practices Prevention Acts or this Act by reason of a conviction or of a report of any Election Court or Election Commissioners, and any witness who gave evidence against such incapacitated person upon the proceeding for such conviction or report is convicted of perjury in respect of that evidence, the incapacitated person may apply to the High Court, and the Court, if satisfied that the conviction or report, so far as respects such person, was based upon perjury, may order that such incapacity shall thenceforth cease, and the same shall cease accordingly.

Removal of incapacity on proof that it was procured by perjury.

(a) "*Commencement of this Act,*" i.e., the 15th day of October, 1883 (s. 67).—Although no inquiries may be made by any Commissioners appointed after the passing of this Act (25th of August, 1883) into any elections prior thereto, persons who have suffered any incapacity through the perjury of witnesses at previous elections, may still obtain the removal of such incapacity on proving that it was procured by such perjury. In order to effect this it will be necessary first to obtain a conviction for perjury. Before such a prosecution can be instituted, it is essential that one or other of the following conditions precedent should have been fulfilled, viz., either the prosecutor must have been bound over to prosecute, or the accused person must have been committed, or bound over to appear, or the indictment must be preferred by the direction or with the consent in writing

Secs. 46, 47. of one of the Judges, or the Attorney or Solicitor-General (22 & 23 Vic. c. 17, s. 1, Archbold, p. 5 and 871). The time within which a prosecution for perjury may be brought is limited to two years (Archbold, p. 79).

Amendment
of law as to
polling districts
and polling
places.

47.—(1.) Every county shall be divided into polling districts, (a) and a polling place shall be assigned to each district in such manner that, so far as is reasonably practicable, every elector resident in the county shall have his polling place within a distance not exceeding three miles from his residence, so nevertheless that a polling district need not in any case be constituted containing less than one hundred electors.

The existing regulations as to polling districts are by this section—which applies only to England, and not to Scotland or Ireland, ss. 68 (2), 69 (9)—amended, so as to enable every resident county elector to have a polling place within three miles of his residence, instead of four as hitherto; but no polling district need consist of less than 100 electors. Similarly, in boroughs (except certain agricultural boroughs, which are treated as counties, sub-sec. 3), every resident elector is to be able to poll within one mile of his residence, provided that a polling district need not contain less than 300 electors.

Regulations as
to accommoda-
tion for
polling.

(a) "*Polling districts—Polling place.*"—In counties, each polling district has a separate polling place; and each polling place may have as many polling stations for the accommodation of the electors entitled to vote at such place, and so distributed as may appear to the returning officer most convenient; but each contributory place of a district borough must have at least one polling station. Each polling station shall have a sufficient number of compartments, in the proportion of one at least to every

150 electors. A separate room or booth may contain a separate polling station, or several polling stations may be constructed in the same room or booth. No person shall be admitted to vote at any polling station except the one allotted to him (Ballot Act, 1872, Rules 15—18).

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In a borough, “polling place” means such borough, or any part thereof in which a separate booth is required or authorised by law to be provided (*ib.*, Rule 57).

(2.) In every county the local authority (b) who have power to divide that county into polling districts shall from time to time divide the county into polling districts, and assign polling places to those districts, and alter those districts and polling places in such manner as may be necessary for the purpose of carrying into effect this section. Division of Counties into polling districts.

(b) “*The local authority*,” *i.e.*, in counties, the justices of the peace in general or quarter sessions assembled (R. P. Act, 1867, s. 24, and Ballot Act, 1872, s. 5), who were required by s. 5 of the latter Act to divide the counties into polling districts; any order to that effect made by them to be laid before Parliament.

(3.) The power of dividing a borough into polling districts vested in a local authority by the Representation of the People Act, 1867, and the enactments amending the same, may be exercised by such local authority from time to time, and as often as the authority think fit, and the said power shall be deemed to include the power of altering any polling district, and the said local authority shall from time to time, where necessary for the purpose of carrying this section into effect, divide the borough into polling districts in such manner that— Division of boroughs into polling districts

- (a) Every elector resident in the borough, if other than one hereinafter mentioned, shall be enabled to poll within a distance not exceeding one mile from his residence, so nevertheless that a polling district need not be constituted containing less than three hundred electors; and

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- (b) Every elector resident in the boroughs of East Retford, Shoreham, Cricklade, Much Wenlock, and Aylesbury, shall be enabled to poll within a distance not exceeding three miles from his residence, so nevertheless that a polling district need not be constituted containing less than one hundred electors.

In boroughs, the division of the constituency into polling districts was left in the discretion of the local authority, *as they might think convenience required it*, both by the R. P. Act, 1867 (s. 34), and by the Ballot Act, s. 5. The present sub-sections make it compulsory to carry the provisions of this section into effect. The local authority in boroughs is defined by the following enactments, which *see* in Appendix, p. 344, *et seq.*:—R. P. Act, 1867, s. 34; the amending Stat. 31 & 32 Vic. c. 58, s. 18, and the Ballot Act, 1872, s. 5.

(4.) So much of section 5 (c) of the Ballot Act, 1872, and the enactments amending the same as in force and is not repealed by this Act, shall apply as if the same were incorporated in this section.

(c) “*So much of section 5 of the Ballot Act.*”—*See Appendix, p. 372.*

(5.) The expenses (d) incurred by the local authority of a county or borough, under this or any other Act, in dividing their county or borough into polling districts, and, in the case of a county, assigning polling places to such districts, and in altering any such districts or polling places, shall be defrayed in like manner as if they were expenses incurred by the registration officer in the execution of the enactments respecting the registration of electors in such county or borough, and those enactments, so far as is consistent with the tenor thereof, shall apply accordingly.

(d) “*The expenses,*” &c.—Section 54 of the Registration Act, 1843, provides for the payment of such expenses in a county “out of the public stock of such

county." Section 55 of the same Act provides for the payment of the same expenses incurred by any town clerk or returning officer of any city or borough, "out of the first moneys to be collected for the relief of the poor," the sum contributed by each parish or township to be in proportion to the number of electors in the same. And by s. 31 of the R. P. Act, 1867, the word "expenses," as here used, includes "all proper and reasonable fees and charges of any clerk of the peace of any county or of any town clerk of any city or borough, to be hereafter made or charged by him in any year for his trouble, care, and attention, in the performance of the services and duties imposed upon him by the Registration Act, 1843, in addition to any money actually paid or disbursed by him for or in respect of any such services or duties as aforesaid." And, further, s. 23 of the 31 & 32 Vic. c. 58, provides a summary remedy for the recovery by town clerks and returning officers of sums of money due to them in respect of such expenses. Secs. 47, 48.

48. When the nature of a county is such that any electors residing therein are unable at an election for such county to reach their polling place without crossing the sea or a branch or arm thereof, this Act shall not prevent the provision of means for conveying (a) such electors by sea to their polling place, and the amount of payment for such means of conveyance may be in addition to the maximum (b) amount of expenses allowed by this Act. Conveyance of voters by sea in certain cases.

This is the only case in which voters may be conveyed at the expense of the candidate (see ss. 7 & 14, and notes).

(a) "*Provision of means for conveying.*"—No payment to the voters themselves for cost of their conveyance is to be made, but the means of their

Secs. 48, 49. conveyance across the water, *e.g.*, a steamboat, may be provided.

(b) "*May be in addition to the maximum.*"—But in any case, whether in addition to or included in the maximum, the particulars of such expenditure must be returned along with the other expenses, under ss. 29 & 33.

Election commissioners not to inquire into elections before the passing of this Act.

49. Notwithstanding the provisions of the Act 15 & 16 Vic. c. 57, or any amendment thereof, in any case where, after the passing of this Act, any Commissioners have been appointed, on a joint address of both Houses of Parliament, for the purpose of making inquiry into the existence of corrupt practices in any election, the said Commissioners shall not make inquiries concerning any election that shall have taken place prior to the passing of this Act, and no witness called before such Commissioners, or at any election petition after the passing of this Act, shall be liable to be asked or bound to answer any question for the purpose of proving the commission of any corrupt practice at or in relation to any election prior to the passing of this Act: Provided that nothing herein contained shall affect any proceedings that shall be pending at the time of such passing.

Section 6 of the Election Commissioners Act, 1852, provided that the Commissioners, upon their finding corrupt practices to have been committed at the election in question, should inquire into the preceding elections, "from election to election, as far back as they may think fit."

The effect of the present section is to modify the above provision, in so far as any inquiry directed after the passing of this Act (25th August, 1883) is concerned.

The above Act was amended by the 56th section of the P. E. Act, 1868, which provided for the appointment of Commissioners with the same powers as above, upon petition by two or more of the electors.

*Legal Proceedings.***Sec. 50.**

50. Where an indictment as defined by this Act (a) for any offence under the Corrupt Practices Prevention Acts (b) or this Act is instituted in the High Court or is removed into the High Court by a writ of certiorari issued at the instance of the Attorney-General, and the Attorney-General suggests (c) on the part of the Crown that it is expedient for the purposes of justice that the indictment should be tried in the Central Criminal Court, or if a special jury is ordered, that it should be tried before a Judge and jury at the Royal Courts of Justice, the High Court may, if it think fit, order that such indictment shall be so tried upon such terms as the Court may think just, and the High Court may make such orders as appear to the Court necessary or proper for carrying into effect the order for such trial.

Trial in Central Criminal Court of indictment for corrupt practice at instance of Attorney-General.

By this section the High Court has power, at the instance of the Attorney-General, to order the trial of any indictment under the C. P. Acts in the Central Criminal Court; or, if the case has been removed into the High Court, and a special jury ordered, in the Royal Courts of Justice.

(a) "*As defined by this Act.*"—Section 64, under which *indictment* includes *information*.

The difference between these two modes of proceeding is this—that an indictment lies for both misdemeanours and felonies, and is presented by a grand jury (Archbold, p. 1, *et seq.*); whereas an information, whether *ex officio* (i.e., filed by the Attorney-General), or at the instance of a private individual, is a proceeding without the intervention of a grand jury, and lies for misdemeanours only (*ib.* p. 116).

(b) "*Under the Corrupt Practices Prevention Acts.*"—These Acts are enumerated in Schedule 3, Parts i. and ii. Of these, however, most of the sections fixing the punishments for corrupt practices have

Prosecutions under the C. P. Acts.

Sec. 50. been repealed in favour of the provisions contained in the present Act. Under those sections, which still remain in force and are included in the above title, the following prosecutions may take place :—

- (1.) A prosecution by the returning officer for personation at the election over which he presided (Ballot Act, 1872, s. 24, App. p. 388) ;
- (2.) A prosecution for misdemeanour against any elector who, having within six months before or during any election, been hired for the purposes of the election, votes at such election (R. P. Act, 1867, s. 11, App. p. 344) ;
- (3.) A prosecution against anyone corruptly paying the rates of an elector, which is made bribery by s. 49 of the same Act ;
- (4.) A prosecution for misdemeanour against a returning officer, his deputy partner, or clerk, who acts as agent for a candidate, under s. 50 of the same Act.

For all the offences and punishments under the new Act, as well as the above, *see* the Table of Offences, *supra*, p. 6.

(c) “ *The Attorney-General suggests.* ”—There is nothing to prevent a private individual from instituting an indictment in the High Court, or having it removed by *certiorari* into the High Court ; but it is only when such writ has been issued at the instance of the Attorney-General, and when the Attorney-General suggests, on the part of the Crown, that the case should be tried at the Central Criminal Court, or before a special jury in the Royal Courts, that

these two last modes of proceeding will be allowed Secs. 50, 51. under this section.

For the practice as to writs of *certiorari*, see Archbold, p. 101, *et seq.*

51.—(1.) A proceeding against a person in respect of the offence of a corrupt or illegal practice, or any other offence under the Corrupt Practices Prevention Acts or this Act, shall be commenced within one year after the offence was committed, or if it was committed in reference to an election with respect to which an inquiry is held by Election Commissioners, shall be commenced within one year after the offence was committed, or within three months after the report of such Commissioners is made, whichever period last expires, so that it be commenced within two years after the offence was committed, and the time so limited by this section shall, in the case of any proceeding under the Summary Jurisdiction Acts for any such offence, whether before an Election Court or otherwise, be substituted for any limitation of time contained in the last-mentioned Acts.

Limitation of time for prosecution of offence.

(2.) For the purposes of this section the issue of a summons, warrant, writ, or other process, shall be deemed to be a commencement of a proceeding, where the service or execution of the same on or against the alleged offender is prevented by the absconding or concealment or act of the alleged offender, but save as aforesaid the service or execution of the same on or against the alleged offender, and not the issue thereof, shall be deemed to be the commencement of the proceeding.

The time for commencing proceedings against a person for any offence under these Acts is limited to one year after commission, or where Election Commissioners are conducting an inquiry, either one year or within three months after their report, whichever period last expires; but in no case after the expiry of two years. And, except in the case of absconding or concealment, a proceeding shall be deemed to commence from the service or execution of the writ or other processes, and not from its issue.

“*A proceeding*,” &c.—See note (b) to last section.

Secs. 52, 53.

Persons charged with corrupt practice may be found guilty of illegal practice.

52. Any person charged with a corrupt practice may, if the circumstances warrant such finding, be found guilty of an illegal practice (which offence shall for that purpose be an indictable offence), and any person charged with an illegal practice may be found guilty of that offence, notwithstanding that the act constituting the offence amounted to a corrupt practice, and a person charged with illegal payment, employment, or hiring, may be found guilty of that offence, notwithstanding that the act constituting the offence amounted to a corrupt or illegal practice.

“*An Indictable Offence*,” otherwise illegal practices, are punishable only on summary conviction. *See s. 10.*

The effect of this section is twofold—(1) that, while the severest punishments under this Act may be mitigated by a finding that the offence committed was less grave than that charged, they cannot, on the other hand, be inflicted where the offence turns out to be actually more serious than was anticipated when the charge was first made; (2), it prevents any offender from escaping by reason of his offence being different from that with which he was charged.

Application of enactments of 17 & 18 Vic. c. 102, and 26 & 27 Vic. c. 29, relating to prosecutions for bribery.

53.—(1.) Sections 10, 12 and 13 (*a*) of the Corrupt Practices Prevention Act, 1854, and s. 6 of the Corrupt Practices Prevention Act, 1863 (*b*) (which relate to prosecutions for bribery and other offences under those Acts), shall extend to any prosecution on indictment for the offence of any corrupt practice within the meaning of this Act, and to any action for any pecuniary forfeiture for an offence under this Act, in like manner as if such offence were bribery within the meaning of those Acts, and such indictment or action were the indictment or action in those sections mentioned, and an order under the said s. 10 may be made on the defendant; but the Director of Public Prosecutions or any person instituting any prosecution in his behalf or by direction of an Election Court shall not be deemed to be a private prosecutor, nor required under the said sections to give any security.

17 & 18 Vic. c. 102.
26 & 27 Vic. c. 29.

(*a*) “*Sections 10*,” &c.—Under s. 10 of the C. P. Act, 1854, the Court may, in any prosecution, for any

offence under that Act, order payment to the prosecutor of such costs and expenses as have been reasonably incurred; but no indictment for bribery or undue influence shall be triable before any Court of Quarter Sessions.

Sec. 53.
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Section 12 provides that, in case of any such indictment or information by a private prosecutor, if judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the taxed costs thereby occasioned to him.

Section 13 prohibits the payment of any costs of a prosecution (as allowed by s. 10), unless the prosecutor shall, before or upon the finding of the indictment or the granting of the information, give security, as required, to conduct the prosecution with effect, and pay the defendant's costs in case of acquittal. (*See Appendix, infra, p. 341.*)

This section extends the above provisions (and s. 6 of 26 & 27 Vic. c. 29, as to which *see* below, p. 269) to prosecutions on indictment under this Act, and actions for pecuniary forfeitures. Prosecutions before Courts of Summary Jurisdiction are provided for by s. 55 (1). The effect of this section, combined with the above sections, will be as follows:—

- (1.) No indictment for any corrupt practice within the meaning of this Act (s. 3) can be tried at Quarter Sessions.
- (2.) The prosecutor (or plaintiff, in case of an action for forfeiture under s. 33 (5), or under s. 7 of the C. P. Act, 1854),*

* It is presumed that these actions will also come within the operation of this section. For, although not immediately, "an action, &c., under this Act," they yet come within its purview, inasmuch as the C. P. Act, 1854, is incorporated with the new Act.

Sec. 53.

unless he be the Public Prosecutor or his representative, must enter into a recognizance, with two sufficient securities, in the sum of £200, before the trial, that he will prosecute and pay the costs in event of an acquittal.

- (3.) The defendant may be ordered, either in a prosecution or an action for penalties, to pay the costs and expenses of the prosecution or action; and such costs are recoverable under s. 58 (2). But the costs of any indictment under this Act, so far as they are not paid by the defendant (*e.g.*, if no order has been made by the Court to that effect, or if the defendant has not the means of paying them, or, presumably, also where, on the prosecution of the Public Prosecutor, the defendant is acquitted), are to be paid in like manner as costs in the case of a prosecution for felony are paid, s. 57 (2); viz., the Court will order the treasurer of the county, or the treasurer, overseer, or other officer having the collection and disbursement of the rates, to pay them;* and under s. 169 of the M. C. Act, 1882, "a municipal corporation of a borough having a separate Court of Quarter Sessions, shall be liable to pay the costs and expenses attending the prosecution of any felony committed

* Archbold p. 322; in the same way, the costs of a Returning Officer who prosecutes for personation are to be allowed, together with compensation for loss of time. (35 & 36 Vic. c. 33, s. 24).

or supposed to have been committed in the borough, and of any other offence committed, or supposed to have been committed, in the borough, the costs and expenses attending the prosecution whereof are by law payable as in the case of a felony."

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- (4.) In any prosecution or action (as above) by a private individual, the defendant, if judgment be given for him, is entitled to recover his costs from the prosecutor.

It is to be observed that, as the Public Prosecutor is authorised to attend all election trials, and upon information otherwise received by him (s. 45), to institute such proceedings as may seem necessary, there will be very little occasion for private individuals to proceed against offenders under these Acts; and it may therefore be presumed that such proceedings will, in future, be rarely, if ever, taken by private individuals, unless in the capacity of returning officers (under the Ballot Act, s. 24) or for the recovery of penalties under s. 33 (5) of Act, 1883, and s. 7 of the C. P. Act, 1854. There is, however, no prohibition in this Act against any private person instituting any such proceedings.

(b) "*Section 6 of the C. P. Act, 1863.*"—This section is as follows:—

"In any indictment or information for bribery or
 "undue influence, and in any action or proceeding
 "for any penalty *for bribery, treating or undue influence*,
 "it shall be sufficient to allege that the defendant
 "was, at the election, at or in connection with which
 "the offence is intended to be alleged to have been

Amendment of
 s. 6 of 26 & 27
 Vic. c. 29.

Sec. 53. “committed, guilty of bribery, treating, or undue influence (as the case may require); and in any criminal or civil proceedings in relation to any such offence, the certificate of the returning officer in this behalf shall be sufficient evidence of the due holding of the election, and of any person therein named having been a candidate thereat.”

This section is the only one of the whole of the Act in question not repealed by the new Act. And as the “action or proceeding for a penalty for bribery, treating, or undue influence” is abolished, being only retained in the two cases mentioned in the last note (above, p. 269), it must be read as if those words were to the following effect—“any action or proceeding for any pecuniary forfeiture for an offence under this Act,” and after the words “guilty of bribery, treating, or undue influence” should be inserted “or as the case may require.”

This enactment is now extended so as to apply to all corrupt practices and actions for penalties, and sub-sec. 3, below, contains a similar provision in respect of illegal practices, payment, hiring, &c.

Amendment of
law as to
evidence.

(2.) On any prosecution under this Act, whether on indictment or summarily, and whether before an Election Court or otherwise, and in any action for a pecuniary forfeiture under this Act, the person prosecuted or sued, and the husband or wife of such person, may, if he or she think fit, (b) be examined as an ordinary witness in the case.

14 & 15 Vic.,
c. 99.

(b) “*May, if he or she think fit.*”—Under Lord Brougham’s Evidence Act, it was provided (s. 3) that nothing therein contained should “in any criminal proceeding render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence

for or against her husband." This restriction is now Secs. 53, 54. by this section removed, so far as their competency is concerned, but only in case the parties desire to be examined. Otherwise they cannot be compelled to come forward as witnesses.

This sub-sec., by including actions for recovery of any pecuniary penalty under the Act, modifies s. 35 of the C. P. Act, 1854, which, relating only to such actions, made the parties not only competent, but also compellable (*see* App. p. 342).

(3.) On any such prosecution or action as aforesaid it shall be sufficient to allege that the person charged was guilty of an illegal practice, payment, employment, or hiring within the meaning of this Act, as the case may be, and the certificate of the returning officer at an election that the election mentioned in the certificate was duly held, and that the person named in the certificate was a candidate at such election, shall be sufficient evidence of the facts therein stated. General allegations in prosecutions or actions to be sufficient.

This sub-sec. contains the same provisions in relation to illegal practices, &c., as have already been enacted in relation to corrupt practices, &c., by s. 6 of the 26 & 27 Vic. c. 29, which *see* in note (b) above, p. 269.

The object of this provision is to prevent the ends of justice from being defeated by any mere technicalities; as, in conjunction with s. 52 above, it will enable a person to be prosecuted for bribery, illegal practice, or payment (or as the case may require), and be punished for whichever offence he may be proved to have committed.

54. (1.) All offences under this Act punishable on summary conviction may be prosecuted in manner provided by the Summary Jurisdiction Acts. Prosecution on summary conviction, and appeal to quarter sessions.

(2.) A person aggrieved by a conviction by a Court of summary jurisdiction for an offence under this Act may appeal to general or quarter sessions against such conviction.

Secs. 54, 55. “*All offences under this Act,*” i.e., Illegal practices, and illegal hiring, payment and employment. As before seen, note (a), s. 53, above, p. 267, no indictments for corrupt practices can be tried except in the Superior Courts, i.e., by an Election Court, the Central Criminal Court, the Assizes, or in the Royal Courts.

Application of
Summary
Jurisdiction
and Indictable
Offences Acts
to proceedings
before Election
Courts.

55. (1.) Except that nothing in this Act shall authorise any appeal against a summary conviction by an Election Court, (a) the Summary Jurisdiction Acts shall, so far as is consistent with the tenor thereof, apply to the prosecution of an offence summarily before an Election Court, in like manner as if it were an offence punishable only on summary conviction, (b) and accordingly the attendance of any person may be enforced, the case heard and determined, and any summary conviction by such Court be carried into effect and enforced, and the costs thereof paid, and the record thereof dealt with (c) under those Acts in like manner as if the Court were a petty sessional Court for the county or place in which such conviction took place.

(a) “*Summary Conviction by an Election Court.*”—Persons may be tried summarily before the Election Court (under s. 43) for any corrupt or illegal practice, unless, in the case of a corrupt practice, the offender elects to be tried by a jury.

(b) “*Offence punishable only on summary conviction.*”—Illegal practices and illegal payment, hiring, &c., must be summarily tried.

(c) “*The record dealt with,*” &c.—Section 14 of the 11 & 12 Vic. c. 43 provides that the conviction or order of the justices shall be lodged with the Clerk of the Peace, to be by him filed among the records of the general quarter sessions of the peace.

(2.) The enactments relating to charges before justices against persons for indictable offences shall, so far as is consistent with the tenor thereof, apply to every case where an Election Court orders a person to be prosecuted on

indictment in like manner as if the Court were a justice of the peace. Sec. 55, 56.

See the following statutes :—11 & 12 Vic. c. 42; 30 & 31 Vic. c. 35; 42 & 43 Vic. c. 49; and Stone's "Justice of the Peace."

56.—(1.) Subject to any rules of Court, any jurisdiction vested by this Act in the High Court (a) may, so far as it relates to indictments or other criminal proceedings, be exercised by any Judge of the Queen's Bench Division, and in other respects may either be exercised by one of the Judges for the time being on the rota for the trial of election petitions, sitting either in Court or at chambers, or may be exercised by a master of the Supreme Court of Judicature in manner directed by and subject to an appeal to the said judges: (b)

Exercise of jurisdiction of High Court, and making rules of Court.

Provided that (c) a master shall not exercise jurisdiction in the case either of an order declaring any act or omission to be an exception from the provisions of this Act with respect to illegal practices, payments, employments, or hirings, or of an order allowing an excuse in relation to a return or declaration respecting election expenses.

(a) "*Vested by this Act in the High Court,*" e.g., applications for relief under ss. 23, 29 (9), 34; for amending petition under s. 40 (2); for dispensing with affidavits on withdrawal of petition under s. 41; for removal of incapacity brought about by perjury under s. 46; or for trial of an indictment before a special jury in the Royal Courts of Justice, s. 50.

(b) "*Appeal to the said Judges.*"—It appears, therefore, that *all* such appeals, whether from a single judge or from the master, are to be heard by the full Court of two election Judges.

(c) "*Provided that,*" &c.—Moreover, applications for the withdrawal of petitions must be made before the full Election Court, consisting of two Judges (42 & 43 Vic. c. 75, s. 2). Orders as to payment of costs are also in the discretion of the Election Court

Secs. 56, 57. (s. 44). But interlocutory applications, as under ss. 40 (2) and 41 (1), may be heard by a single Judge.

As to Scotland, *see* s. 68 (4), and for Ireland, s. 69 (6).

Authority for making Rules of Court.

(2.) Rules of Court (*d*) may from time to time be made, revoked, and altered for the purposes of this Act, and of the Parliamentary Elections Act, 1868, and the Acts amending the same, by the same authority by whom Rules of Court for procedure and practice in the Supreme Court of Judicature can for the time being be made.

(*d*) "*Rules of Court.*"—The authority for making Rules of Court for procedure and practice is, by s. 19 of the Supreme Court of Judicature Act, 1881, stated to be any five or more of the following persons, of whom the Lord Chancellor shall be one, namely, the Lord Chancellor, Lord Chief Justice, Master of the Rolls, President of the Probate, Divorce and Admiralty Division, and four other judges of the Supreme Court of Judicature, to be from time to time appointed for the purpose by the Lord Chancellor in writing under his hand, such appointment to continue for such time as shall be specified therein.

Director of public prosecutions, and expenses of prosecutions. 42 & 43 Vic. c. 22.

57. (1.) The Director of Public Prosecutions in performing any duty under this Act (*a*) shall act in accordance with the regulations (*b*) under the Prosecution of Offences Act, 1879, and subject thereto in accordance with the directions (if any) given to him by the Attorney-General; and any assistant or representative of the Director of Public Prosecutions in performing any duty under this Act shall act in accordance with the said regulations and directions, if any, and with the directions given to him by the Director of Public Prosecutions.

(*a*) "*Any duty under this Act.*"—*See* ss. 38 (7) (8), 41 (5), 43 (1)-(3), 45.

(*b*) "*Regulations.*"—Although drafted in 1880,

these Regulations have only recently been published **Secs. 57, 58.**
as a Parliamentary paper, May, 1883, No. 177. The
reference to this Act does not apply to Scotland,
see s. 68 (7); nor to Ireland, *see* s. 69 (8).

(2.) Subject to the provisions of this Act, (c) the costs of any prosecution on indictment for an offence punishable under this Act, whether by the Director of Public Prosecutions or his representative, or by any other person, shall, so far as they are not paid by the defendant, be paid in like manner as costs in the case of a prosecution for felony (d) are paid.

(c) "*Subject to the provisions of this Act,*" &c.—*See* notes to ss. 43 (8), 44, 53 (1).

(d) "*As in . . . Felony.*"—*See* note (a) to s. 53 (1) *supra*, p. 268.

58. (1.) Where any costs or other sums (not being costs of a prosecution (a) on indictment) are, under an order of an Election Court, or otherwise under this Act, (b) to be paid by a county or borough, the Commissioners of Her Majesty's Treasury shall pay those costs or sums, and obtain repayment of the amount so paid, in like manner as if such costs and sums were expenses of Election Commissioners paid by them, and the Election Commissioners Expenses Acts, 1869 and 1871, shall apply accordingly as if they were herein re-enacted and in terms made applicable to the above-mentioned costs and sums.

Recovery of costs payable by county or borough or by person.

32 & 33 Vic.
c. 21.
34 & 35 Vic.
c. 61.

Costs, other than costs of an indictment, when ordered by an Election Court or Commission to be paid by a constituency, are recoverable by the Treasury as if they were expenses of Election Commissioners. When ordered to be paid by a private person, they are recoverable as a simple contract debt.

(a) "*Prosecution.*"—*See* notes to last section.

(b) "*Or otherwise under this Act.*"—The only place where power is given by this Act to saddle a constituency with the costs of a petition is s. 44 (1) above, and there mention is made only of the

Secs. 58, 59. Election Court. It was probably intended that the Commissioners should have the same power of inflicting costs upon a corrupt constituency; but this does not appear to be directly stated; unless it is to be implied from the concluding words of this sub-section.

Recovery of costs payable by private persons.

(2.) Where any costs (c) or other sums are, under the order of an Election Court or otherwise under this Act, to be paid by any person, those costs shall be a simple contract debt due from such person to the person or persons to whom they are to be paid, and if payable to the Commissioners of Her Majesty's Treasury shall be a debt to Her Majesty, and in either case may be recovered accordingly. (d)

(c) "*Any Costs*," &c.—i.e., whether of a petition or of a criminal prosecution. As to the former, see s. 44 (1). As to the latter, see ss. 43 (8), 44 (2), 53 (1), 55 (1).

(d) "*Be recovered accordingly*."—As to procedure for simple contract debts, see Allen's "*Forms of Pleadings*," &c., p. 63 *et seq.*, and Bullen & Leake's "*Prec. of Pleading*," p. 231. For the remedy in the case of the Commissioners of H. M.'s Treasury, see *Reg. v. Mayor of Maidenhead*, (9 Q. B. D. 494), where it was held that the Commissioners of the Treasury are entitled to a peremptory mandamus compelling the treasurer of a Municipal Corporation to repay to them the amount of the expenses of an Election Court out of the borough fund or rate, and compelling the Corporation to order such amount to be levied by a borough rate.

Supplemental Provisions, Definitions, Savings, and Repeal.

Obligation of witness to answer, and certificate of indemnity.

59. (1.) A person who is called as a witness respecting an election before any Election Court shall not be excused from answering any questions relating to any offence at or connected with such election, on the ground that the answer

thereto may criminate or tend to criminate himself or on the ground of privilege, (a)

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Provided that—

- (a) a witness who answers truly (b) all questions which he is required by the Election Court to answer shall be entitled to receive a certificate of indemnity under the hand of a member of the Court stating that such witness has so answered; and
- (b) An answer by a person to a question put by or before any election Court shall not, except in the case of any criminal proceeding for perjury in respect of such evidence, be in any proceeding, civil or criminal, admissible in evidence against him;

(2.) Where a person has received such a certificate of indemnity in relation to an election, and any legal proceeding is at any time instituted against him for any offence under the Corrupt Practices Prevention Acts or this Act, committed by him previously to the date of the certificate at or in relation to the said election, the Court having cognisance of the case shall on proof of the certificate (c) stay the proceeding, and may in their discretion award to the said person such costs as he may have been put to in the proceeding.

(3.) Nothing in this section shall be taken to relieve a person receiving a certificate of indemnity from any incapacity (d) under this Act or from any proceeding to enforce such incapacity (e) (other than a criminal prosecution).

(4.) This section shall apply in the case of a witness before any Election Commissioners, in like manner as if the expression "Election Court" in this section included Election Commissioners.

(5.) Where a solicitor or person lawfully acting as agent (f) for any party to an election petition respecting any election for a county or borough has not taken any part or been concerned in such election, the Election Commissioners inquiring into such election shall not be entitled to examine such solicitor or agent respecting matters which came to his knowledge by reason only of his being concerned as solicitor or agent for a party to such petition.

The following rules are by this section laid down with respect to evidence in Election Courts:—

- (1.) No witnesses, either before a Court or the Commissioners, may refuse to answer

Sec. 59.

a question on the ground either that it may incriminate him or that he is privileged.

- (2.) A witness who answers truly all the questions required of him by an Election Court will receive a certificate of indemnity, which will operate to stay any proceedings against him for offences under these Acts committed previous to its date, but not to relieve him from any incapacity or proceeding to enforce the same.
- (3.) Except in the case of a witness perjuring himself *in the evidence given by him* (*R. v. Buttle*, 22 L. T.), his answers shall not be admitted in evidence against him in any proceedings, civil or criminal.
- (3.) A solicitor or Parliamentary agent, though acting in the matter of a petition, is not therefore liable to examination before an Election Commission if he has had nothing to do with the election.

(a) "*On the ground of privilege,*" *e.g.*, in the case of a solicitor to any of the parties. An Election Court may, under this sub-section, examine *any* solicitor; but Election Commissioners may only examine a solicitor or Parliamentary agent respecting matters which came to his knowledge as such solicitor or agent when he has actually taken part or been concerned in the election (sub-sec. 5).

(b) "*A witness who answers truly shall be entitled.*"—Upon these words two questions arise—(1) as to the meaning of the word "truly"; and (2) whether, if the certificate be withheld, the decision of the Court so to withhold it can be reviewed on a writ of

mandamus. These questions were fully dealt with in the recent case of *Reg. v. Holl* (7 Q. B. D. 575), in the course of which Lord Bramwell said, as to the former of the above questions:—"The expression, 'where any witness shall answer' (the words of the repealed s. 7. of 26 & 27 Vic. c. 29) * means answer *honestly*—I will not say *truly*, because a man may make a mistaken answer—and I agree that he would be entitled to a certificate if his answer were an honest one." As to the latter question, it was ruled in the case of *Reg. v. Price* (L.R. 7 Q.B. 411), upon the same repealed statute, that if a witness has, in point of fact, answered all such questions (as were thereby required to be answered), he is entitled to a certificate, and that if the Election Commissioners refused to grant a certificate, on the ground that they are of opinion that he has not answered the questions, their decision was not final and conclusive, and might be reviewed by mandamus. Lord Bramwell, however, in his judgment above cited, strongly dissented from this decision, and stated his opinion "that the words, 'in the opinion of the Commissioners,' must be read into the Act," justifying his opinion by the fact that "the words '*criminate him*,' by the concession of everybody, must mean criminate him *as to corrupt practices*. . . . The certificate is to be a certificate stating that the witness was required to answer questions relating to the matter aforesaid, the answers to which criminated or tended to criminate him, and had answered all such questions. That means 'had

Sec. 59.

Reg. v. Holl.

* The material words of this section were substantially the same as in the present section, except for the word *truly*, which is new.

Sec. 59.
—

truly,' that is to say, 'honestly' answered those questions. But for the Commissioners to certify that the man has truly answered all such questions is to certify that, in their opinion and judgment, he has done so."

Brett, M. R., agreed with the above ruling, but refused to overrule *Reg. v. Price*, which, in his opinion, it was unnecessary to do, that judgment amounting to this: "That upon the existence in fact of certain circumstances, a witness who has been examined is entitled, as a matter of law, to his certificate, and that the existence, in fact, of the said circumstances are not to be conclusively decided by the Commissioners, but their decision upon whether those circumstances do exist or not, as a matter of fact, can be reviewed, and if wrongly decided, may be remedied upon a mandamus."

(c) "*On proof of the certificate.*"—But the certificate must clearly show that the witness had fulfilled all the requisite conditions, else it will not operate to stay such proceedings. Thus in *Reg. v. Hulme* (L. R. 5 Q. B. 377), the defendant was examined as a witness before Election Commissioners, and received a certificate under s. 7 of the 26 & 27 Vic. c. 29, which certified that "upon his examination he was required by us to answer questions, his answers to which criminated or tended to criminate him, and answered all such questions; but divers of his said answers were unsatisfactory to us, and we believe were false, and false to his knowledge." The defendant having afterwards been convicted on a prosecution for bribery, and obtained a rule to stay proceedings under the same section, it was held that the defendant, to entitle

him to a certificate, must make true answers to all questions; that the Commissioners had in effect refused to certify that the defendant's answers were true, and that the certificate was not such as the section required, and did not operate as a stay of proceedings. Secs. 59-61.

Section 17 of the P. E. Act, 1868 (Appendix p. 357), permits the adducing of evidence to prove a corrupt practice, before agency has been proved. "But it is desirable (although permissible to go into charges of bribery before proving the agency) that the proof should not be given, unless there is a reasonable expectation of proving the agency afterwards" (*Bristol*, 2 O. & H. 29).

(d) "*Any incapacity.*"—See ss. 6 (3), (4), 10, 36, 37, 38 (6) (9).

(e) "*Any proceeding to enforce such incapacity,*" e.g., before the Registration Courts under s. 39.

(f) "*A person lawfully acting as agent.*"—See s. 57 of the P. E. Act, 1868 (Appendix p. 365).

60. An Election Court or Election Commissioners, when reporting that certain persons have been guilty of any corrupt or illegal practice, shall report whether those persons have or have not been furnished with certificates of indemnity; and such report shall be laid before the Attorney-General (accompanied in the case of the Commissioners with the evidence on which such report was based) with a view to his instituting or directing a prosecution against such persons as have not received certificates of indemnity, if the evidence should, in his opinion, be sufficient to support a prosecution. Submission
report of
Election
or Commis-
sioners to
Attorney-
General.

61. (1.) Section eleven of the Ballot Act, 1872, shall apply to a returning officer, or presiding officer or clerk who is guilty of any wilful misfeasance or wilful act of omission in contravention of this Act in like manner as if the same were in contravention of the Ballot Act, 1872. Breach of duty
by officer.
35 & 36 Vic.
c. 33.

(2.) Section ninety-seven of the Parliamentary Registration Act, 1843, shall apply to every registration officer who is guilty 6 Vic. c. 18.

Secs. 61, 62. of any wilful misfeasance or wilful act of commission or omission contrary to this Act in like manner as if the same were contrary to the Parliamentary Registration Act, 1843.

This section of the Ballot Act makes any such officer liable in such a case to forfeit (in addition to any other penalty or liability to which he may be subject) to any person aggrieved by such misfeasance, act or omission, a penal sum not exceeding £100.

And by s. 51 of P. E. Act, 1868, "where an election petition complains of the conduct of a returning officer, such returning officer shall, for all the purposes of this Act, except the admission of respondents in his place, be deemed to be a respondent."

For the duties of a returning officer under this Act, *see* ss. 24 (3) (4), 25 (3), 26, 32 (2), and 35 (1) (2).

Section 97 of the 6 Vic. c. 18, contains a similar provision respecting registration officers.

For the definition of "registration officers," *see* s. 64.

For the duties of such officer, *see* s. 39; as to Scotland, *see* s. 68 (16); and for Ireland, s. 69 (3).

62. (1.) Any public notice required to be given by the returning officer under this Act (a) shall be given in the manner in which he is directed by the Ballot Act, 1872 (b) to give a public notice.

Publication and
service of
notices.
35 & 36 Vic.
c. 33.

(a) "*Under this Act.*"—*See* s. 24 (3) (4), 25 (3) (4), 26 (1), 35 (1).

(b) "*By the Ballot Act, 1872.*"—*See* Rule 46, "where the returning officer is required or authorised by this Act to give any public notice, he shall carry such requirement into effect by advertisements placards, handbills, or such other means as he thinks best calculated to afford information to the electors."

(2.) Where any summons, notice, (c) or document required is to be served on any person with reference to any proceeding respecting an election for county or borough, whether for the purpose of causing him to appear before the High Court or any Election Court, or Election Commissioners, or otherwise, or for the purpose of giving him an opportunity of making a statement, or showing cause, or being heard by himself, before any Court of Commissioners, for any purpose of this Act, such summons, notice or document may be served either by delivering the same to such person, or by leaving the same at, or sending the same by post by a registered letter to, his last-known place of abode in the said county or borough, or if the proceeding is before any Court or Commissioners, in such other manner as the Court or Commissioners may direct, and in proving such service by post it shall be sufficient to prove that the letter was prepaid, properly addressed, and registered with the post-office.

(c) "*Summons, notice, &c.*"—See, as to causing him to appear, ss. 34 (2) and 43 (2); and as to giving an opportunity of showing cause, &c., ss. 38 (1), 39 (6) and 44. Notice of certain applications to the Court for relief, &c., must also be given, under ss. 23 and 34 (1).

(3.) In the form of notice (d) of a Parliamentary election, set forth in the Second Schedule to the Ballot Act, 1872, the words "or any illegal practice" shall be inserted after the words "or other corrupt practices," and the words the "Corrupt and Illegal Practices Prevention Act, 1883," shall be inserted after the words "Corrupt Practices Prevention Act, 1854."

(d) *Form of Notice.*—The notice, or rather the last paragraph, which alone is affected by this provision, will read as follows:—

"Take notice, that all persons who are guilty of bribery, treating, undue influence, personation, or other corrupt practices or any illegal practice, at the said election, will, on conviction of such offence, be liable to the penalties mentioned in that behalf in the Corrupt Practices Pre-

Secs. 62, 63.

Definition of
candidate and
saving for
persons
nominated
without
consent.

vention Act, 1854, the Corrupt and Illegal Practices Prevention Act, 1883, the Ballot Act, 1872, and the Acts amending the said Acts."

63. (1.) In the Corrupt Practices Prevention Acts, as amended by this Act, the expression "candidate at an election" and the expression "candidate" respectively mean, unless the context otherwise requires, any person elected to serve in Parliament at such election, and any person who is nominated as a candidate at such election, or is declared by himself or by others to be a candidate, on or after the day of the issue of the writ for such election, or after the dissolution or vacancy in consequence of which such writ has been issued;

(2.) Provided that where a person has been nominated as a candidate, or declared to be a candidate by others, then—

- (a) If he was so nominated or declared without his consent, nothing in this Act shall be construed to impose any liability on such person, unless he has afterwards given his assent to such nomination or declaration, or has been elected; and
- (b) If he was so nominated or declared, either without his consent or in his absence, and he takes no part in the election, he may, if he thinks fit, make the declaration respecting election expenses contained in the second part of the Second Schedule to this Act, and the election agent shall, so far as circumstances admit, comply with the provisions of this Act with respect to expenses incurred on account of or in respect of the conduct or management of the election in like manner as if the candidate had been nominated or declared with his consent.

"Or by others."—These words were not in the former definitions of candidate which are repealed by this Act. A person formerly could only be *declared* to be a candidate by himself, although he might be *nominated* by others without his consent. Now he may be both nominated and declared by others with or without his consent. But in the latter case he will incur no liability, unless he has

either afterwards given his assent (whether implied by his acts, or expressly by word or writing), or has been elected. If duly elected, even against his will, he cannot relinquish his seat. This is the settled principle of Parliamentary law; but in order to evade this restriction, a member who wishes to retire accepts office under the Crown, viz., the stewardship of the Chiltern Hundreds, which being nominally an office of emolument, legally vacates the seat.* If nominated without his consent, those who nominated him are jointly and severally liable for his share of the returning officer's charges (38 & 39 Vic. c. 84, s. 2). This applies only to those charges, so that he would still be liable for the usual election expenses. But he may, in such case, subscribe the declaration as to election expenses given in Sched. 2, Part ii: (*infra*, p. 316). And it will then be the duty of the election agent, who must previously have been appointed on his behalf, presumably by those nominating the candidate, to comply with the provisions of the Act contained in ss. 26, *et seq.*

The election agent is not required to be appointed until the nomination day, s. 24 (1); but as acts vacating the seat may be done before that day, it will be important to have an election agent duly appointed as soon as the candidature commences. A person who actually stands as candidate may of

* May's Parliamentary Practice, p. 708. See 5 Rich. II, Stat. II. c. 4. "The King doth will and command, and it is assented in the Parliament by the Prelates, Lords and Commons, that all and singular persons and commonalties which from henceforth shall have the summons of the Parliament, shall come from henceforth to the Parliaments in the manner as they are bound to do. . . . And if any person which from henceforth shall have the said summons . . . do absent himself and come not at the said summons, except he may reasonably and honestly excuse him to our Lord the King, he shall be amerced and otherwise punished, according as of old times," &c.

Secs. 63, 64. course find his election invalidated by acts done by him prior to the commencement of his candidature, if he be proved to have been guilty of corrupt intention. Thus in the *Youghal* case (1 O. & H. 291), where the respondent announced himself as a candidate in July, and the dissolution did not take place till August, he was unseated for acts of treating committed by him previously to the latter date. "If any person who shall be elected, or who shall be nominated, or who shall have declared himself [or, under the new Act, been declared by others] a candidate after the issuing of the writ or dissolution, does the acts mentioned in the section, he is guilty of treating. If a party does the acts before the dissolution, intending to become a candidate, but does not in fact, after the dissolution, become a candidate and is not elected, he cannot be guilty of the statutable offence of treating. But the respondent having been elected is, in our opinion, guilty of the offence though committed before the dissolution." (s. c.)

If a candidate should die before the poll, the returning officer must countermand the poll, and all proceedings with reference to the election must be commenced afresh, in all respects as if the writ had been received by the returning officer on the day on which the death was proved to him, but a candidate who has already been nominated need not have a fresh nomination (Ballot Act, 1872, s. 1).

General
interpretation
of terms.

64. In this Act, unless the context otherwise requires—

The expression "election" (a) means the election of a member or members to serve in Parliament :

(a) "*Election.*"—Sections 37 and 38 have reference to Municipal as well as Parliamentary elections. (*See*

also definition of "public office," last clause, below **Sec. 64.**
p.291).

The expression "election petition" (b) means a petition presented in pursuance of the Parliamentary Elections Act, 1868, as amended by this Act : **31 & 32 Vic. c. 125.**

(b) "*Election Petition.*"—See ss. 40 and 41 and the P. E. Act, 1868 (Appendix, p. 350). For forms of petition, see Appendix, p. 435.

The expression "Election Court" means the Judges (c) presiding at the trial of an election petition, or, if the matter comes before the High Court, that Court:

(c) "*The Judges.*"—Formerly the Court consisted of only one Judge, but under 42 & 43 Vic. c. 75, all election petition trials, and applications for withdrawal of petitions, must be heard before two Judges (Appendix, p. 415).

The expression "Election Commissioners" means Commissioners appointed in pursuance of the Election Commissioners Act, (d) 1852, and the enactments amending the same : **15 & 16 Vic. c. 57.**

(d) "*Election Commissioners Act, 1852,*" Appendix, p. 333.—The amending enactment is s. 56 of the P. E. Act, 1868.

The expression "High Court" (e) means Her Majesty's High Court of Justice in England:

(e) "*High Court.*"—Its jurisdiction is to be exercised, in criminal proceedings, by any Judge of the Queen's Bench Division, and in other respects either by one of the election Judges, or by a master of the Supreme Court. Section 56 (1).

The expressions "Court of summary jurisdiction," "petty sessional Court," and "Summary Jurisdiction Acts," have the same meaning as in the Summary Jurisdiction Act, 1879 : (f) **42 & 43 Vic. c. 49.**

(f) "*Summary Jurisdiction Act, 1879.*"—Section 50 of this Act declares that a "Court of summary

Sec. 64. jurisdiction" shall mean "any justices of the peace or other magistrate by whatever name called (*e.g.*, mayor in a corporation) to whom jurisdiction is given by, or who is, or who are authorised, to act under the S. J. Acts, or any of such Acts." Section 20 (6) defines a "Petty Sessional Court" to be "a Court of summary jurisdiction consisting of two or more justices when sitting in a Petty Sessional Court-house."

The Summary Jurisdiction Acts mean those of 1848, 1879, and any Act past or future amending the same or any of them.

The expression "Attorney-General" includes the Solicitor-General in cases where the office of the Attorney-General is vacant or the Attorney-General is interested (*g*) or otherwise unable to act:

(*g*) "*Is interested.*"—This would happen in the case of his own election; and presumably also where, if he had a colleague in the representation, and their candidatures had been joint, though only for a part of the election, any question arises as to the validity of that colleague's election (*cp.* Sched. 1, Part v. 4 *c.*).

The expression "registration officer" means the clerk of the peace in a county, and the town clerk in a borough, as respectively defined by the enactments relating to the registration (*h*) of Parliamentary electors:

(*h*) "*Enactments relating to Registration,*" &c., viz., 6 Vic. c. 18, s. 101, which defines "clerk of the peace" to "comprehend and apply to any deputy or other persons executing the duties of such clerk of the peace;" and "town clerk" to mean "except in regard to the cities of London and Westminster and the borough of Southwark, any person executing the

duties of town clerk, or if in any city or borough there shall be no such officer as town clerk, then any officer executing the same or like duties as usually devolved upon the town clerk; or if in any city or borough there be no such person, then the returning officer of such city or borough, or such person as the returning officer may appoint for that purpose, which he is hereby authorised to do. . . .” And “returning officer” applies to every person or persons to whom, by virtue of his or their office, under any law, custom, or statute, the execution of any writ [or precept] doth or shall belong for the election of a member or members to serve in Parliament, by whatever name or title such person or persons may be called. But in the city of London, the term town clerk means the “secondaries;” and in Westminster and Southwark, the “high bailiff” (s. 56 of the same Act). See as to Ireland 13 & 14 Vic. c. 69, s. 117; and for Scotland, s. 68 (1) below.

The expression “elector” means any person whose name is for the time being on the register (i) roll or book containing the names of the persons entitled to vote at the election with reference to which the expression is used:

The expression “register of electors” means the said register (i) roll or book:

(i) “*The Register.*”—See s. 39.

The expression “polling agent” means an agent of the candidate appointed to attend at a polling station in pursuance of the Ballot Act, 1872, or of the Acts ^{35 & 36 Vic.} therein referred to (k) or amending the same: ^{c. 33.}

(k) “*The Acts therein referred to,*” i.e., The Registration Act, 1843, s. 85 (see Appendix, p. 329).—The agents of the candidate as therein defined are, by Rule 57 under the Ballot Act, 1872, to be the polling

Sec. 64.

agents. Each candidate may employ one such agent only in each polling station. (Sched. 1, Part i., 1883.) The candidate may either himself undertake the duties of a polling agent, or assist his agent in the performance of the same (Rule 51); and the returning officer has no right to exclude him in either case (Rule 21. *Clementson v. Mason*, L. R. 10 C. P. 216). As to Scotland, see Rule 59 under the Ballot Act, and for Ireland, see 13 & 14 Vic. c. 69, s. 92, which is the same as s. 85 of the 6 Vic. c. 18.

The expression "person" includes an association or body of persons, corporate or unincorporate, and where any act is done by any such association or body, the members of such association or body who have taken part (l) in the commission of such act shall be liable to any fine or punishment imposed for the same by this Act:

(l) "*Who have taken part,*" &c.—Therefore the mere fact of belonging to or joining such an association, if in ignorance of any illegal acts committed by it, will not involve any liability.

The expression "committee room" (m) shall not include any house or room occupied by a candidate at an election as a dwelling, by reason only of the candidate there transacting business with his agents in relation to such election; nor shall any room or building be deemed to be a committee room for the purposes of this Act by reason only of the candidate or any agent of the candidate addressing therein electors, committeemen, or others:

(m) "*Committee room.*"—See note (c) to s. 7, p. 135, and s. 20.

The expression "public office" means any office under the Crown or under the charter of a city or municipal borough or under the Acts relating to Municipal Corporations, or to the Poor Law, or under the Elementary Education Act, 1870, (n) or under the Public Health Act, 1875, (o) or under any Acts amending the above-mentioned Acts, or under any

33 & 34 Vic.
c. 75.

38 & 39 Vic.
c. 55.

other Acts for the time being in force (whether passed before or after the commencement of this Act) relating to local government (*p*) whether the office is that of mayor, chairman, alderman, councillor, guardian, member of a board, commission, or other local authority in any county, city, borough, union, sanitary district, or other area, or is the office of clerk of the peace, town clerk, clerk or other officer under a council, board, commission, or other authority, or is any other office, to which a person is elected or appointed under any such charter or Act as above-mentioned, and includes any other municipal or parochial office; and the expressions (*r*) "election," "election petition," "Election Court," and "register of electors," shall, where expressed to refer to an election for any such public office, be construed accordingly:

(*n*) "*Education Act, 1870.*"—33 & 34 Vic. c. 75, s. 91, enacts that any person who at the election of any member of a School Board, or any officer appointed for the purpose of such election, is guilty of corrupt practices, shall, on conviction for each offence, be liable to a penalty not exceeding £2, and be disqualified for six years from exercising any franchise at any election under that Act, or at any municipal or Parliamentary election.

(*o*) "*Public Health Act, 1875.*"—See as to the constitution and election of Local Boards under this Act, s. 8 and Sched. 2 of the same Act.

(*p*) "*Any other Acts relating to Local Government,*" e.g., the Metropolis Management Acts.

(*r*) "*The expressions 'Election,' &c., shall be construed.*"—See note to s. 38 (10).

The expression "judicial office" includes the office of justice of the peace and revising barrister:

The expression "personal expenses" (*s*) as used with respect to the expenditure of any candidate in relation to any election includes the reasonable

Secs. 64-66.

travelling expenses of such candidate, and the reasonable expenses of his living at hotels or elsewhere for the purposes of and in relation to such election :

(s) "*Personal expenses.*"—See note to s. 31 (1).

The expression "indictment" includes information : (t)

(t) "*Information.*"—See, as to difference between these several modes of procedure, note (a) to s. 50.

The expression "costs" includes costs, charges, and expenses :

The expression "payment" includes any pecuniary or other reward ; and the expressions "pecuniary reward" and "money" shall be deemed to include any office, place, or employment, and any valuable security or other equivalent for money, and any valuable consideration, and expressions referring to money shall be construed accordingly :

The expression "Licensing Acts" means the Licensing Acts, 1872 to 1874 :

Other expressions have the same meaning (u) as in the Corrupt Practices Prevention Acts.

(u) "*The same meaning, &c.*"—For C. P. Acts see Schedule 3. The clauses of those statutes herein referred to are s. 38 of C. P. Act, 1854 (Appendix p. 342) ; s. 3 of the P. E. Act, 1868 (Appendix p. 350).

Short titles.

65. (1.) The enactments described in the Third Schedule to this Act are in this Act referred to as the Corrupt Practices Prevention Acts.

(2.) The Acts mentioned in the Fourth Schedule to this Act are in this Act referred to and may be cited respectively by the short titles in that behalf in that schedule mentioned.

(3.) This Act may be cited as the Corrupt and Illegal Practices Prevention Act, 1883.

(4.) This Act and the Corrupt Practices Prevention Acts may be cited together as the Corrupt Practices Prevention Acts, 1854 to 1883.

Repeal of Acts.

66. The Acts set forth in the Fifth Schedule to this Act

are hereby repealed as from the commencement of this Act (a) to the extent in the third column of that schedule mentioned, provided that this repeal or the expiration of any enactment not continued by this Act (b) shall not revive any enactment which at the commencement of this Act is repealed, and shall not affect anything duly done or suffered before the commencement of this Act, or any right acquired or accrued or any incapacity incurred before the commencement of this Act, and any person (c) subject to any incapacity under any enactment hereby repealed or not continued shall continue subject thereto, and this Act shall apply to him as if he had become so subject in pursuance of the provisions of this Act.

Sec. 66.

(a) "*As from the commencement of this Act,*" i.e., the 15th day of October, 1883 (s. 67).

(b) "*Any enactment not continued by this Act.*"—The temporary enactments continued by s. 70 until the 31st of December, 1884, are contained in Part i. of Schedule 3.

(c) "*And any person,*" &c.—Thus, under the repealed ss. 43 & 45 of the P. E. Act, 1868, which imposed similar incapacities to those contained in the present Act, all such incapacities will continue by virtue of this section until the term of seven years has elapsed from the date at which the party was found guilty. And all such persons will be liable to the penalties imposed by ss. 9 & 37 of the present Act for voting while so disqualified.

67. This Act shall come into operation on the fifteenth day of October one thousand eight hundred and eighty-three, which day is in this Act referred to as the commencement of this Act. Commencement
of Act.

An Act, in contemplation of the law, comes into effect from the commencement of the day on which its operation is declared to commence, i.e., from immediately after midnight (*Tomlinson v. Bullock*, 4 Q. B. D. 230).

Sec. 68.

*Application of Act to Scotland.*Application of
Act to Scotland.

68. This Act shall apply to Scotland, with the following modifications :

(1.) The following expressions shall mean as follows :

The expression "misdemeanour" shall mean crime and offence :

The expression "indictment" shall include criminal letters :

The expression "solicitor" shall mean enrolled law agent :

The expression "revising barrister" shall mean sheriff :

The expression "barrister" shall mean advocate :

The expression "petty sessional Court" shall mean sheriff Court :

The expression "quarter sessions" shall mean the Court of Justiciary :

The expression "registration officer" shall mean an assessor under the enactments relating to the registration of Parliamentary voters :

The expression "municipal borough" shall include royal burgh and burgh of regality and burgh of barony :

The expression "relating to municipal corporations" shall include the General Police and Improvement (Scotland) Act, 1862, and any other Act relating to the constitution and government of burghs in Scotland :

The expression "mayor" shall mean provost or chief magistrate :

The expression "alderman" shall mean bailie :

The expression "Summary Jurisdiction Acts" shall mean the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, and any Acts amending the same.

(2.) The provisions of this Act with respect to polling districts (a) and the expenses of dividing a county or borough into polling districts shall not apply to Scotland.

(a) "*Polling Districts.*"—See s. 47. The Ballot Act, 1872, s. 16, (4) contains a similar provision. This branch of the subject is regulated in Scotland by the 2 & 3 Will. IV. c. 65, s. 27, which provides that these duties shall be performed in the counties by the sheriffs, and in the cities and burghs by the town clerks.

(3.) The provisions respecting the attendance at the trial of an election petition of a representative of the Director of Public Prosecutions (b) shall not apply to Scotland, and in place thereof the following provisions shall have effect :

Sec. 68.

- (a) At the trial of every election petition in Scotland Her Majesty's advocate shall be represented by one of his deputies or by the procurator-fiscal of the sheriff Court, of the district, who shall attend such trial as part of his official duty, and shall give all necessary assistance to the Judge with respect to the citation of witnesses and recovery of documents :
- (b) If the Judge shall grant a warrant for the apprehension, commitment, or citation of any person suspected of being guilty of a corrupt or illegal practice, the case shall be reported to Her Majesty's advocate in order that such person may be brought to trial before the High Court of Justiciary or the sheriff, according to the nature of the case :
- (c) It shall be the duty of the advocate, deputy, or, in his absence, procurator-fiscal, if it appears to him that a corrupt or illegal practice within the meaning of this Act has been committed by any person who has not received a certificate of indemnity, to report the case to Her Majesty's advocate in order to such person being brought to trial before the proper Court, although no warrant may have been issued by the Judge.

(b) "*Director of Public Prosecutions.*"—See s. 43 and sub-sec. (7) below.

(4.) The jurisdiction under the High Court of Justice under this Act shall, in Scotland, be exercised by one of the Divisions of the Court of Session, or by a Judge of the said Court to whom the same may be remitted by such division, and subject to an appeal thereto, and the Court of Session shall have power to make Acts of sederunt for the purposes of this Act.

(5.) Court of Oyer and Terminer shall mean a circuit Court of Justiciary, and the High Court of Justiciary shall have powers to make acts of adjournal regulating the procedure in appeals to the circuit Court under this Act.

(6.) All offences under this Act punishable on summary conviction (c) may be prosecuted in the sheriff Court in manner provided by the Summary Jurisdiction Acts, and all necessary jurisdictions are hereby conferred on sheriffs.

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(c) "*On summary conviction.*"—See Table of offences, *supra*, p. 6.

(7.) The authority given by this Act to the Director of Public Prosecutions in England shall in Scotland be exercised by Her Majesty's advocate, and the reference to the Prosecution of Offences Act, 1879, shall not apply.

25 & 26 Vic.
c. 35.
39 & 40 Vic.
c. 26.

(8.) The expression "Licensing Acts" shall mean "the Public Houses Acts Amendment (Scotland) Act, 1862," and "The Publicans' Certificates (Scotland) Act, 1876," and the Acts thereby amended and therein recited.

(9.) The expression "register of licences" shall mean the register kept in pursuance of section 12 of the Act of the ninth year of the reign of King George the Fourth, chapter fifty-eight.

(10.) The references to the Public Health Act, 1875, and to the Elementary Education Act, 1870, shall be construed to refer to the Public Health (Scotland) Act, 1867, and to the Elementary Education (Scotland) Act, 1872.

(11.) Any reference to the Parliamentary Elections Returning Officers' Act, 1875, (*d*) shall not apply.

(*d*) "*Parliamentary Elections Returning Officers Act, 1875.*"—This Act does not apply to Scotland (s. 11); but see the Scotch Act, 41 & 42 Vic. c. 41.

(12.) The provision with respect to the registration officer (*e*) sending the corrupt and illegal practices list to overseers and the dealing with such list by overseers shall not apply, and in lieu thereof it is hereby enacted that the assessor shall in counties include the names of such persons in the list of persons who have become disqualified, and in boroughs shall omit the names of such persons from the list of persons entitled to vote.

(*e*) "*Registration Officer.*"—See s. 39 (3), and the Scotch Registration Acts (19 & 20 Vic. c. 58, s. 5; 24 & 25 Vic. c. 88, s. 22; 31 & 32 Vic. c. 48, s. 19).

(13.) The power given by this Act to the Lord Chancellor (*f*) in England shall in Scotland, except so far as relates to the justices of the peace, be exercised by the Lord Justice-General.

(14.) Any reference to the Attorney-General shall refer to the Lord Advocate.

(f) "*The power given to the Lord Chancellor,*" i.e., **Secs. 68, 69.**
the power of regulating the hearing of appeals from
the Election Commissioners, *see s. 38 (3)* .

(15.) The provisions with respect to the removal of cases (g)
to the Central Criminal Court or to the trial of cases at the
Royal Courts of Justice shall not apply.

(g) "*Removal of cases.*"—Under s. 50.

(16.) Section thirty-eight of the County Voters Registra- **24 & 25 Vic.**
tion (Scotland) Act, 1861, shall be substituted for section **c. 63.**
ninety-seven of the Parliamentary Registration Act, 1843,
where reference is made to that section in this Act.

(17.) The provision of this Act with regard to costs (h)
shall not apply to Scotland, and instead thereof the following
provision shall have effect :

The costs of petitions and other proceedings under
"The Parliamentary Elections Act, 1868," and
under this Act, shall, subject to any regulations
which the Court of Session may make by act of
sederunt, be taxed as nearly as possible according
to the same principles as costs between agent and
client are taxed in a cause in that Court, and the
auditor shall not allow any costs, charges, or
expenses on a higher scale.

(h) *Costs.*—Section 44 (3).

Application of Act to Ireland.

69. This Act shall apply to Ireland, with the following **Application of**
modifications : **Act to Ireland.**

(1.) No person shall be tried for any offence against
this Act under any of the provisions of the
Prevention of Crime (a) (Ireland) Act, 1882."

45 & 46 Vic.
c. 25.

(a) "*Prevention of crime.*"—Provision was made by
this Act for the trial of certain offences enumerated
in s. 1 (1), (i.) by a special Commission Court con-
sisting of three Judges (s. 1 (3) ; (ii.) at the request
of the Attorney-General, by special jurors (s. 4) ;
and on his motion also the venue may be changed
(s. 6).

Sec. 69.

14 & 15 Vic.
c. 93.

(2.) The expression "Summary Jurisdiction Acts" means, with reference to the Dublin Metropolitan Police District, the Acts regulating the powers and duties of justices of the peace and of the police in such district; and with reference to other parts of Ireland means the Petty Sessions (Ireland) Act, 1851, and any Acts amending the said Act.

(3.) Section one hundred and three of the Act (*b*) of the session of the thirteenth and fourteenth years of the reign of Her present Majesty, chapter sixty-nine, shall be substituted for section ninety-seven of the Parliamentary Registration Act, 1843, where reference is made (*c*) to that section in this Act.

(*b*) "*Section 103 of the Act,*" &c.—This enactment provides that "every sheriff, under sheriff, clerk of the peace, town clerk, clerk of the union, high constable, returning officer, clerk of the crown and hanaper, postmaster, or other person or public officer, required by this Act to do any matter or thing, shall, for every wilful misfeasance, or wilful act of commission or omission, contrary to this Act, forfeit to any party aggrieved the penal sum of £100," or such less sum as a jury may consider just, with full costs of suit; but nothing therein contained supersedes any remedy or action against any returning officer under any law then in force.

(*c*) "*Where reference is made,*" *i.e.*, in s. 61 (2).

(4.) The provision (*d*) with respect to the registration officer sending the corrupt and illegal practices list to overseers, and the dealing with such list by overseers, shall not apply, and in lieu thereof it is hereby enacted that the registration officer shall, after making out such list, himself publish the same in the manner in which he publishes the lists referred to in the twenty-first and the thirty-third sections of the Act of the session of the thirteenth and fourteenth years of the reign of Her present Majesty, chapter sixty-nine; and shall also in the

case of every person in the corrupt and illegal practices list enter "objected to" against his name in the register and lists made out by such registration officer in like manner as he is by law required to do in other cases of disqualification.

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(d) "*The provision,*" &c.—See s. 39 (3).

(5.) The Supreme Court of Judicature in Ireland shall be substituted for the Supreme Court of Judicature.

(6.) The High Court of Justice in Ireland shall be substituted for the High Court of Justice in England.

(7.) The Lord High Chancellor of Ireland shall be substituted for the Lord High Chancellor of Great Britain.

(8.) The Attorney-General for Ireland shall be substituted for the Director of Public Prosecutions, and the reference to the prosecution of the Offences Act, 1879, shall not apply.

(9.) The provisions of this Act relative to polling districts shall not apply to Ireland, but in the county of the town of Galway (f) there shall be a polling station at Barna, and at such other places within the Parliamentary borough of Galway as the town commissioners may appoint.

(f) "*County of the Town of Galway.*"—The R. P. (Ireland) Act, 1868, s. 12, prohibited the payment of expenses of conveying voters to the poll in Irish boroughs, except in Cork, Galway, and Limerick. But this enactment was repealed, except as to Galway, by s. 32 of the Ballot Act, 1872, and now the whole section is repealed by this Act. By s. 5 of the 13 & 14 Vic. c. 68, and Sched. B., provision was made for dividing certain cities and boroughs * into polling districts; but Galway was not included in the number.

(10.) Any reference to Part iv. (g) of the Municipal Corporations Act, 1882, shall be construed to refer to the Corrupt Practices (Municipal Elections) Act, 1872.

* Belfast, Cork, Dublin, Limerick and Waterford.

Secs. 69, 70. (g) "*Any reference to Part iv.*" &c.—See ss. 37–39, and Appendix, p. 417.

(11.) Any reference to the Licensing Acts (*h*) shall be construed to refer to the Licensing Acts (Ireland), 1872–1874.

(*h*) "*Any reference to the Licensing Acts.*"—See s. 38 (8).

41 & 42 Vic.
c. 52.

(12.) The Public Health (Ireland) Act, 1878, shall be substituted for the Public Health Act, 1875.

(13.) The provisions with respect to the removal of cases (*i*) to the Central Criminal Court, or to the trial of cases at the Royal Courts of Justice, shall not apply to Ireland.

(*i*) "*Removal of cases.*"—See s. 50.

Continuance.

Continuance.

70. This Act shall continue in force until the thirty-first day of December one thousand eight hundred and eighty-four and no longer, unless continued by Parliament; and such of the Corrupt Practices Prevention Acts as are referred to in Part One of the Third Schedule to this Act shall continue in force until the same day, and no longer, unless continued by Parliament.

The reason for limiting to a year the operation of an Act of such importance, and over which so much time and care had been spent, caused some little surprise even among members of Parliament. It will therefore be interesting to many to learn that such limitation was not a matter of mere caprice on the part of the Parliamentary majority. The Attorney-General explained that almost every Corrupt Practices Act had been of a temporary character, generally, as in the case of the P. E. Act, 1868, limited to three years; and as several of these temporary Acts (which are continued from year to year by an Expiring Laws Continuance Act), are embodied in the present Act, it was necessary to follow the

prevailing custom. That custom, it appears, rests on the principle "that, in a matter relating to its own affairs, the House wished to keep to itself an opportunity of recalling its jurisdiction." But a strong opinion was expressed in the course of the debate, that the time had almost come "when the House might take the view that they need not be very jealous of losing their privileges," and for that reason make these Acts of merely temporary duration. (Hansard, vol. 281, 974).

Sec. 70.
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SCHEDULES.

FIRST SCHEDULE.

PART I.

PERSONS LEGALLY EMPLOYED FOR PAYMENT.

- (1.) One election agent (*a*) and no more.
- (2.) In counties one deputy election agent, (*b*) (in this Act referred to as a sub-agent) to act within each polling district, and no more.
- (3.) One polling agent (*c*) in each polling station and no more.
- (4.) In a borough one clerk and one messenger, or if the number of electors in the borough exceeds five hundred, a number of clerks and messengers not exceeding in number one clerk and one messenger for every complete five hundred electors in the borough, and if there is a number of electors over and above any complete five hundred or complete five hundreds of electors, then one clerk and one messenger may be employed for such number, although not amounting to a complete five hundred.
- (5.) In a county for the central committee room one clerk and one messenger, or if the number of electors in the county exceeds five thousand, then a number of clerks and messengers not exceeding in number one clerk and one messenger for every complete five thousand electors in the county; and if there is a number of electors over and above any complete five thousand, or complete five thousands of electors, then one clerk and one messenger may be employed for such number, although not amounting to a complete five thousand.
- (6.) In a county a number of clerks and messengers not exceeding in number one clerk and one messenger for each polling district in the county, or where the number of electors in a polling district exceeds five hundred one clerk and one messenger for every complete five hundred electors in the polling district, and if there is a number of electors over and above any complete five hundred, or complete five hundreds of electors, then one clerk and one messenger may be employed for such number, although not amounting to a complete five hundred: Provided always, that the number of clerks and

Sched. 1.

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Sched. 1. — messengers so allowed in any county may be employed in any polling district where their services may be required.

(7.) Any such paid election agent, sub-agent, polling agent, clerk, and messenger may or may not be an elector but may not vote. (*d*)

(8.) In the case of the boroughs of East Retford, (*e*) Shoreham, Cricklade, Much Wenlock, and Aylesbury, the provisions of this part of this schedule shall apply as if such borough were a county.

The employment by any one of any persons in contravention of this schedule is punishable as "illegal employment," the employee being liable equally with his employer (*see* s. 17); and if the latter be the candidate or his election agent, it becomes an illegal practice (s. 21). But the persons are to be engaged "for the purpose of promoting the election." Hence a permanent salaried registration agent and his staff would not seem to come within the prohibition, unless, *e.g.*, they receive extra pay for doing actual election work (s. 17). Any number of unpaid volunteers may give their services. And in addition to the persons here mentioned, the expenses allowed in Part ii. of this schedule, of "issuing and distributing addresses and notices," implies that some persons may be employed for that purpose also. (*See* note (*b*) to s. 7).

(*a*) "*One election agent.*"—For his appointment, duties, &c., *see* ss. 24 *et seq.*

(*b*) "*Deputy election agent.*"—*See* s. 25.

(*c*) "*Polling agent.*"—*See* definition in s. 64, p. 289.

(*d*) "*But may not vote.*"—And if he does vote he is guilty of an illegal practice, as is also any person who induces or procures him to do so (s. 9).

(*e*) "*Boroughs of East Retford, &c.*"—*Cp.* s. 47 (3).

PART II.

Sched. 1.
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LEGAL EXPENSES IN ADDITION TO EXPENSES UNDER PART I.

(1.) Sums paid to the returning officer (a) for his charges not exceeding the amount authorised by the Act 38 & 39 Vic. c. 84.

(2.) The personal expenses (b) of the candidate.

(3.) The expenses of printing, the expenses of advertising and the expenses of publishing, (c) issuing and distributing addresses and notices.

(4.) The expenses of stationery, messages, postage, and telegrams.

(5.) The expenses of holding public meetings.

(6.) In a borough the expenses of one committee room, and if the number of electors in the borough exceeds five hundred then of a number of committee rooms not exceeding the number of one committee room for every complete five hundred electors in the borough, and if there is a number of electors over and above any complete five hundred or complete five hundreds of electors, then of one committee room for such number, although not amounting to a complete five hundred.

(7.) In a county the expenses of a central committee room, and in addition of a number of committee rooms not exceeding in number one committee room for each polling district in the county, and where the number of electors in a polling district exceeds five hundred one additional committee room may be hired for every complete five hundred electors in such polling district over and above the first five hundred.

All the expenses enumerated in this part, except returning officers' charges and personal expenses of candidates, are to be included in the maximum scale fixed by Part iv.

(a) "*Returning Officer.*"—See the Parliamentary Elections (Returning Officers) Act, 1875, and the corresponding Act for Scotland (41 & 42 Vic. c. 41), in the Appendix, p. 413. A returning officer may not charge for his services and expenses higher sums than those fixed by the schedules to these Acts. A detailed account of these charges must be transmitted to the election agent; and the returning officer is not entitled to any charges not included in that account.

Sched. 1. If any part of the claim is objected to, a taxation may be obtained by application to a County Court, which is enforceable as if it were a judgment (s. 4).

(b) "*Personal Expenses.*"—They must be reasonable (s. 64, p. 291), and if exceeding £100 in amount, must be paid by the election agent (s. 31).

(c) "*Expenses of Publishing,*" &c.—See note, *supra*, p. 304.

(4.) "*Expenses of Stationery,*" &c.—See s. 31 (3).

(6.) "*Committee Room.*"—As to where a committee room may not be, see s. 20. It is an illegal practice to hire more than the statutory number (s. 7); and only the election agent must enter into a contract for hire of such rooms (s. 27).

PART III.

Maximum for Miscellaneous Matters.

Expenses in respect of miscellaneous matters other than those mentioned in Part i. and Part ii. of this schedule not exceeding in the whole the maximum amount of two hundred pounds, so nevertheless that such expenses are not incurred in respect of any matter or in any manner constituting an offence under this or any other Act, or in respect of any matter or thing, payment for which is expressly prohibited by this or any other Act.

Expenses under this head—

- (1.) Are limited to £200 in every constituency.
- (2.) Must be included in the maximum scale in Part iv.
- (3.) Must be included in the election agent's return, and pass through his or his sub-agent's hands.
- (4.) Must not be incurred in respect of any matter or in any manner constituting an offence or prohibited under this or any other Act.

Moreover, where there are two joint candidates, the maximum of £200 is to be reduced by one-fourth for each; and where more than two, by one-third. (See Part v., sub-sec. 3).

Sched. 1.

PART IV.

Maximum Scale.

(1.) In a borough the expenses mentioned above in Parts i. ii. and iii. of this schedule, other than personal expenses and sums paid to the returning officer for his charges, shall not exceed in the whole the maximum amount in the scale following:—

If the number of electors

on the register—

The maximum amount shall be—

Does not exceed 2,000 - - £350.

Exceeds 2,000 - - £380, and an additional £30 for every complete 1,000 electors above 2,000.

Provided that in Ireland if the number of electors

on the register—

The maximum amount shall be—

Does not exceed 500 - - £200.

Exceeds 500, but does not exceed 1,000 - - £250.

Exceeds 1,000, but does not exceed 1,500 - - £275.

(2.) In a county the expenses mentioned above in Parts i. ii. and iii. of this schedule, other than personal expenses and sums paid to the returning officer for his charges, shall not exceed in the whole the maximum amount in the scale following:

If the number of electors

on the register—

The maximum amount shall be—

Does not exceed 2,000 £650 in England and Scotland, and £500 in Ireland.

Exceeds 2,000 - - £710 in England and Scotland, and £540 in Ireland; and an additional £60 in England and Scotland, and £40 in Ireland, for every complete 1,000 electors above 2,000.

Sched. 1.

MAXIMUM SCALE.

Where the Electors on the Register number	Boroughs (including Universities), except five agricultural boroughs, in the United Kingdom.		Counties and the Boroughs of East Retford, Shoreham, Cricklade, Much Wenlock and Aylesbury.			
	One Candidate.	Two joint Candidates.	England and Scotland.		Ireland.	
			One Candidate.	Two joint Candidates.	One Candidate.	Two joint Candidates.
	£	£	£	£	£	£
500 or less	200	...	} Applies to Ireland only			
1,000 "	250	...				
1,500 "	275	412 10 ^(a)				
2,000 "	350	525 0	650	975	500	750
2,000 and over	} 380	570 0	710	1,065	540	810
3,000 at least						
4,000 "	410	615 0	770	1,155	580	870
5,000 "	440	660 0	830	1,245	620	930
6,000 "	470	705 0	890	1,335	660	990
7,000 "	500	750 0	950	1,425	700	1,050
8,000 "	530	795 0	1,010	1,515	740	1,110
9,000 "	560	840 0	1,070	1,605	780	1,170
10,000 "	590	885 0	1,130	1,695	820	1,230
11,000 "	620	930 0	1,190	1,785	860	1,290
12,000 "	650	975 0	1,250	1,875	900	1,350
13,000 "	680	1,020 0	1,310	1,965	940	1,410
14,000 "	710	1,065 0	1,370	2,055	980	1,470
15,000 "	740	1,110 0	1,430	2,145	1,020	1,530
16,000 "	770	1,155 0	1,490	2,235	1,060	1,590
17,000 "	800	1,200 0	1,550	2,325	1,100	1,650
18,000 "	830	1,245 0	1,610	2,415	1,140	1,710
19,000 "	860	1,290 0	1,670	2,505	1,180	1,770
20,000 "	890	1,335 0	1,730	2,595	1,220 ^(c)	1,830
25,000 "	1,040	1,560 0	2,080	3,045		
30,000 "	1,190	1,785 0	2,330	3,495		
35,000 "	1,340	2,010 0	2,630	3,945		
45,000 "	1,640	2,460 0	3,230	4,845		
50,000 "	1,790	2,685 0	3,530	5,295		
60,000 "	1,940	3,135 0	4,130	6,195		
63,000 "	2,030	3,270 0	4,310	6,465		
65,000 ^(b) "	2,090	3,360 0	4,430	6,645		

(a) In the election of 1880, Galway (with 1,146 electors) was the only Irish borough, having fewer than 1,500 electors, which returned two members.

(b) At the same election, the two largest borough

constituencies in the United Kingdom were Birmingham, with an electorate of 63,909, and Liverpool, with 63,221 voters on the register. The largest county constituency was Middlesex, with a register of 33,173. The probable effect of the impending Reform Bill, if it passes before the next General Election, will be to add considerably to the numbers of the county constituencies, and also, but in a less degree, to those of the boroughs. The numbers up to which the expenditure has been in each case calculated in the above Table, will probably cover any such increase in the electorate.

(c) The largest county constituency in Ireland, in 1880, was Cork, with 14,945 electors. The new Reform Bill, so far as it affects Ireland, will probably not make any increase in the number of county electors exceeding that above provided for.

In calculating the above Tables for joint candidatures, it is to be observed that where there are two joint candidates the maximum for each is to be reduced by one-fourth; where more than two, by one-third (*see* Part v., sub-sec. 3). It has not been thought necessary to work out the details in the latter case. But the maximum for three joint candidates will readily be found by multiplying that of a single candidate by three.

It must also be recollected that personal expenses of candidates and returning officers' charges are outside this maximum.

Sched. 1.

PART V.

General.

(1.) In the case of the boroughs of East Retford, Shoreham, Cricklade, Much Wenlock and Aylesbury, the provisions of Parts ii. iii. and iv. of this schedule shall apply as if such borough were a county.

(2.) For the purposes of this schedule the number of electors shall be taken according to the enumeration of the electors in the register of electors.

(3.) Where there are two or more joint candidates at an election, the maximum amount of expenses mentioned in Parts iii. and iv. of this schedule shall, for each of such joint-candidates, be reduced by one-fourth, or if there are more than two joint candidates, by one-third.

(4.) Where, the same election agent is appointed by or on behalf of two or more candidates at an election, or where two or more candidates, by themselves or any agent or agents, hire or use the same committee rooms for such election, or employ or use the services of the same sub-agents, clerks, messengers, or polling agents at such election, or publish a joint address or joint circular or notice at such election, those candidates shall be deemed, for the purposes of this enactment, to be joint candidates at such election.

Provided that—

- (a) The employment and use of the same committee room, sub-agent, clerk, messenger, or polling agent, if accidental or casual, or of a trivial and unimportant character, shall not be deemed of itself to constitute persons joint candidates.
- (b) Nothing in this enactment shall prevent candidates from ceasing to be joint candidates.
- (c) Where any excess of expenses above the maximum allowed for one of two or more joint candidates has arisen owing to his having ceased to be a joint candidate, or to his having become a joint candidate after having begun to conduct his election as a separate candidate, and such ceasing or beginning was in good faith, and such excess is not more than under the circumstances is reasonable, and the total expenses of such candidate do not exceed the maximum amount allowed for a separate candidate, such excess shall be deemed to have arisen from a reasonable cause within the meaning of the enactments respecting the allowance by the High Court

or Election Court of an exception from the provisions of this Act which would otherwise make an act an illegal practice, and the candidate and his election agent may be relieved accordingly from the consequences of having incurred such excess of expenses. Scheds. 1 & 2.

(1.) *Boroughs of East Retford, &c.*—Section 47 (3), and Part i. of this schedule (sub-sec. 8).

(2.) *Register of Electors.*—See note (n), s. 39 (3), and s. 64, p. 289.

(3.) Thus, if the legal maximum in a single-handed contest is £350, the share of each candidate in a joint candidature will be £262 10s., or together, £525. Similarly, where there are more than two joint candidates, the separate expenses of each will be two-thirds of what he would have been allowed to spend if standing alone.

(4.) *Reasonable cause within the enactment, &c.*—See note (b) to s. 23.

SECOND SCHEDULE.

PART I.

FORM OF DECLARATIONS AS TO EXPENSES.

Form for Candidate.

I , having been a candidate at the election for the county [or borough] of on the day of , do hereby solemnly and sincerely declare that I have examined the return of election expenses [about to be] transmitted by my election agent [or if the candidate is his own election agent, "by me"] to the returning officer at the said election, a copy of which is now shown to me and marked , and to the best of my knowledge and belief that return is correct ;

And I further solemnly and sincerely declare that, except as appears from that return, I have not, and to the best of my knowledge and belief no person, nor any club, society or association, has, on my behalf, made any payment, or given, promised, or offered any reward, office, employment, or

Sched. 2. — valuable consideration, or incurred any liability on account of or in respect of the conduct or management of the said election;

And I further solemnly and sincerely declare that I have paid to my election agent [*if the candidate is also his own election agent, leave out "to my election agent"*] the sum of pounds and no more for the purpose of the said election, and that, except as specified in the said return, no money, security, or equivalent for money has to my knowledge or belief been paid, advanced, given, or deposited by anyone to or in the hands of my election agent [*or if the candidate is his own election agent, "myself"*] or any other person for the purpose of defraying any expenses incurred on my behalf on account of or in respect of the conduct or management of the said election;

And I further solemnly and sincerely declare that I will not, except so far as I may be permitted by law, at any future time make or be party to the making or giving of, any payment, reward, office, employment, or valuable consideration for the purpose of defraying any such expenses as last mentioned, or provide or be party to the providing of any money, security, or equivalent for money for the purpose of defraying any such expenses.

Signature of declarant

C. D.

Signed and declared by the above-named declarant on the day of , before me,

(Signed) *E. F.*

Justice of the Peace for

Form for Election Agent.

I, , being election agent to , candidate at the election for the county [*or borough*] of , on the day of , do hereby solemnly and sincerely declare that I have examined the return of election expenses about to be transmitted by me to the returning officer at the said election, and now shown to me and marked , and to the best of my knowledge and belief that return is correct;

And I hereby further solemnly and sincerely declare that, except as appears from that return, I have not and to the best of my knowledge and belief no other person, nor any club, society, or association has on behalf of the said candidate made any payment, or given, promised, or offered any reward,

Sched. 2.

office, employment, or valuable consideration, or incurred any liability on account of or in respect of the conduct or management of the said election :

And I further solemnly and sincerely declare that I have received from the said candidate _____ pounds and no more [or nothing] for the purpose of the said election, and that, except as specified in the same return sent by me, no money, security, or equivalent for money has been paid, advanced, given, or deposited by any one to me or in my hands, or to the best of my knowledge and belief, to or in the hands of any other person for the purpose of defraying any expenses incurred on behalf of the said candidate on account of, or in respect of the conduct or management of the said election.

Signature of declarant *A. B.*

Signed and declared by the above-named declarant on the
day of before me.

(Signed) *E. F.*,
Justice of the peace for

FORM OF RETURN OF ELECTION EXPENSES.

I, A. B., being election agent to C. D., candidate at the election for the county [or borough] of _____ on the _____ day of _____, make the following return respecting election expenses of the said candidate at the said election [or *where the candidate has named himself as election agent*, "I, C. D., " at the election for the county [or borough] of _____ on the _____ day of _____, acting as my own election agent, " make the following return respecting my election expenses " at the said election"].

Receipts.

Received of [the above-named candidate] [or where
the candidate is his own election agent, "Paid by } £
me"]

Received of <i>J. K.</i>	£
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[Here set out the name and description of every person, club, society, or association, whether the candidate or not, from whom any money, securities, or equivalent of money was received in respect of expenses incurred on account of or in connection with or incidental to the above election, and the amount received from each person, club, society or association separately.]

Sched. 2.

Expenditure.

Paid to *E. F.*, the returning officer for the said county [or borough] for his charges at the said election £

Personal expenses of the said *C. D.*, paid by himself [or if the candidate is his own election agent, "Paid by me as candidate"] £

Do. do. paid by me [or if the candidate is his own election agent, add "acting as election agent"] £

Received by me for my services as election agent at the said election [or if the candidate is his own election agent, leave out this item] £

Paid to *G. H.*, as sub-agent of the polling district of £

[The name and description of each sub-agent and the sum paid to him must be set out separately.]

Paid to as polling agent £

Paid to as clerk for days services £

Paid to as messenger for days services £

[The names and descriptions of every polling agent, clerk, and messenger, and the sum paid to each, must be set out separately either in the account or in a separate list annexed to and referred to in the account, thus, "Paid to polling agent (or as the case may be) as per annexed list £ ."]

Paid to the following persons in respect of goods supplied or work and labour done:

To *P. Q.* (printing) £

To *M. N.* (advertising) £

To *R. S.* (stationery) £

[The name and description of each person, and the nature of the goods supplied, or the work and labour done by each, must be set out separately either in the account or in a separate list annexed to and referred to in the account.]

Paid for postage £

Paid for telegrams £

Paid for the hire of rooms as follows:— £

For committee rooms £

[A room hired for a public meeting or for a committee room must be named or described so as to identify it; and the name and description of every person to whom any payment was made for each such room, together with the amount paid, must be set out separately either in the account or in a separate list annexed to and referred to in the account.]

Paid for miscellaneous matters, namely— £

[The name and description of each person to whom any sum is paid, and the reason for which it was paid to him, must be set out separately either in the account or in a separate list annexed to and referred to in the account.]

In addition to the above, I am aware, as election agent for C. D., [or if the candidate is his own election agent, leave out "as election agent for C.D."] of the following disputed and unpaid claims; namely,—

By T. U. for £

[Here set out the name and description of each person whose claim is disputed, the amount of the claim, and the goods, work, or other matter on the ground of which the claim is based.]

Unpaid claims allowed by the High Court to be paid after the proper time or in respect of which application has been or is about to be made to the High Court.

By M. O. for £

[Here state the name and description of each person to whom any such claim is due, and the amount of the claim, and the goods, work and labour or other matter on account of which the claim is due.]

(Signed) A. B.

The above return is to be accompanied by all the bills and receipts. See s. 33 (1) a.

Sched. 2.

PART II.

FORM OF DECLARATION AS TO EXPENSES.

Form for Candidate where declared a Candidate or nominated in his absence and taking no part in the election.

I, _____, having been nominated [or having been declared by others] in my absence [to be] a candidate at the election for the county or borough of _____, held on the _____ day of _____, do hereby solemnly and sincerely declare that I have taken no part whatever in the said election.

And I further solemnly and sincerely declare that [or with the exception of _____] I have not, and no person, club, society, or association at my expense, has made any payment, or given, promised, or offered, any reward, office, employment, or valuable consideration, or incurred any liability on account of, or in respect of the conduct or management of the said election.

And I further solemnly and sincerely declare that [or with the exception of _____] I have not paid any money or given any security or equivalent for money to the person acting as my election agent at the said election, or to any other person, club, society, or association on account of, or in respect of, the conduct or management of the said election, and that [or with the exception of _____] I am entirely ignorant of any money security or equivalent for money having been paid, advanced, given, or deposited by any one for the purpose of defraying any expenses incurred on account of or in respect of the conduct or management of the said election.

And I further solemnly and sincerely declare that I will not, except so far as I may be permitted by law, at any future time make or be party to the making or giving of any payment, reward, office, employment, or valuable consideration for the purpose of defraying any such expenses as last mentioned, or provide, or be party to the providing of any money, security or equivalent of money for the purpose of defraying any such expenses.

Signature of Declarant

C. D.

Signed and declared by the above-named declarant on the _____ day of _____, before me,

(Signed) *E. F.*,

Justice of the Peace for

THIRD SCHEDULE.
CORRUPT PRACTICES PREVENTION ACTS.

Sched. 3.

Session and Chapter.	Title of Act.	Enactments referred to as being the Corrupt Practices Prevention Acts.
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P A R T O N E.

Temporary.

17 & 18 Vic. c. 102.	The Corrupt Practices Prevention Act, 1854.	The whole Act so far as unrepealed.
26 & 27 Vic. c. 29.	An Act to amend and continue the law relating to corrupt practices at elections of members of Parliament.	The whole Act so far as unrepealed.
31 & 32 Vic. c. 125.	The Parliamentary Elections Act, 1868.	The whole Act so far as unrepealed.
35 & 36 Vic. c. 33.	The Ballot Act, 1872 -	Part iii. so far as unrepealed.
42 & 43 Vic. c. 75.	The Parliamentary Elections and Corrupt Practices Act, 1879.	The whole Act so far as unrepealed.

P A R T T W O.

Permanent.

30 & 31 Vic. c. 102.	The Representation of the People Act, 1867.	Sections eleven, forty-nine, and fifty.
31 & 32 Vic. c. 48.	The Representation of the People (Scotland) Act, 1868.	Sections eight and forty-nine.
31 & 32 Vic. c. 49.	The Representation of the People (Ireland) Act, 1868.	Sections eight and thirteen.
44 & 45 Vic. c. 40.	The Universities Elections Amendment (Scotland) Act, 1881.	Sub-section seventeen of section two.

Sched. 3.

PART THREE.

ENACTMENTS DEFINING THE OFFENCES OF BRIBERY AND
PERSONATION.*The Corrupt Practices Prevention Act, 17 & 18 Vic.*
c. 102, ss. 2, 3.Bribery
defined.Section 2. The following persons shall be deemed guilty
of bribery, and shall be punishable accordingly:—

- (1.) Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure, or to endeavour to procure, any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person in order to induce any voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election :
- (2.) Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure or to endeavour to procure, any office, place or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person in order to induce such voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of any voter having voted or refrained from voting at any election :
- (3.) Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, make any such gift, loan, offer, promise, procurement or agreement as aforesaid to or for any person, in order to induce such person to procure or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election :
- (4.) Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procure or engage, promise or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election :

- (5.) Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election. Provided always, that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses *bonâ fide* incurred at or concerning any election.

Sched. 3.

Section 3. The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly:—

Bribery further defined.

- (1.) Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment, for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at any election:
- (2.) Every person who shall, after any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election.

*The Representation of the People Act, 1867, 30 & 31 Vic.
c. 102, s. 49.*

Any person, either directly or indirectly, corruptly paying any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote at any future election, and any candidate or other person, either directly or indirectly, paying any rate on behalf of any voter for the purpose of inducing him to vote or refrain from voting, shall be guilty of bribery, and be punishable accordingly; and any person on whose behalf and with whose privity any such payment as in this section is mentioned is made, shall also be guilty of bribery, and punishable accordingly.

Corrupt payment of rates to be punishable as bribery.

Sched. 3.

The Representation of the People (Scotland) Act, 1868,
31 & 32 Vic. c. 48, s. 49.

Corrupt
payment of
rates to be
punishable as
bribery.

Any person, either directly or indirectly, corruptly paying any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote at any future election, and any candidate or other person, either directly or indirectly, paying any rate on behalf of any voter for the purpose of inducing him to vote or refrain from voting, shall be guilty of bribery, and be punishable accordingly; and any person on whose behalf and with whose privity any such payment as in this section mentioned is made shall also be guilty of bribery, and punishable accordingly.

The Universities Elections Amendment (Scotland) Act, 1881,
44 & 45 Vic. c. 40, s. 2.

Corrupt
payment of
registration fee
to be punishable
as bribery.

17. Any person, either directly or indirectly, corruptly paying any fee for the purpose of enabling any person to be registered as a member of the general council, and thereby to influence his vote at any future election, and any candidate or other person, either directly or indirectly, paying such fee on behalf of any person for the purpose of inducing him to vote or to refrain from voting, shall be guilty of bribery, and shall be punishable accordingly; and any person on whose behalf and with whose privity any such payment as in this section mentioned is made, shall also be guilty of bribery, and punishable accordingly.

The Ballot Act, 1872, 35 & 36 Vic. c. 33, s. 24.

Personation
defined.

A person shall for all purposes of the laws relating to Parliamentary and municipal elections be deemed to be guilty of the offence of personation who, at an election for a county or borough, or at a municipal election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who, having voted once at any such election, applies at the same election for a ballot paper in his own name.

FOURTH SCHEDULE.

Scheds. 4 & 5.

SHORT TITLES.

Session and Chapter.	Long Title.	Short Title.
15 & 16 Vic. c. 57.	An Act to provide for more effectual inquiry into the existence of corrupt practices at the election of members to serve in Parliament.	Election Commissioners Act, 1852.
26 & 27 Vic. c. 29.	An Act to amend and continue the law relating to corrupt practices at elections of members of Parliament.	The Corrupt Practices Prevention Act, 1863.

By some omission the Acts mentioned in this Schedule never contained a clause giving a short title.

FIFTH SCHEDULE.

ENACTMENTS REPEALED.

NOTE.—Portions of Acts which have already been specifically repealed are in some instances included in this Schedule in order to preclude henceforth the necessity of looking back to previous Acts.

A description or citation of a portion of an Act is inclusive of the words, section, or other part first or last mentioned, or otherwise referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
60 Geo. III. & 1 Geo. IV. c. 11.	An Act for the better regulation of polls, and for making further provision touching the election of members to serve in Parliament for Ireland.	Section thirty-six.*

* This section related to personation. Of the few remaining sections yet unrepealed, the 25th relates to the punishment of returning officers acting corruptly or impartially; and the 22nd to the employment of special constables

Sched. 5.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
1 & 2 Geo. IV. c. 58.	An Act to regulate the expenses of elections of members to serve in Parliament for Ireland.	The whole Act except section three.†
4 Geo. IV. c. 55.	An Act to consolidate and amend the several Acts now in force so far as the same relate to the election and return of members to serve in Parliament for the counties of cities and counties of towns in Ireland.	Section eighty-two.‡
17 & 18 Vic. c. 102.	The Corrupt Practices Prevention Act, 1854.	Section one. Section two, from "and any person so offending" to "with full costs of suit." Section three, from "and any person so offending" to the end of the section. Section four. Section five. Section six. Section seven, from "and all payments" to the end of the section.

at the poll. As all the provisions of this Act relating to counties have been repealed it applies only to boroughs. But similar provisions occur in 4 Geo. IV. c. 55, which relates to counties.

† This section prohibits, under pain of incapacity to be elected, the giving of any rewards or presents to returning officers, sheriffs, &c.

‡ The section hereby repealed related to personation. The principal provisions of the Act remaining deal with the punishment of returning officers acting corruptly or impartially, the employment of special constables at the poll, and the prohibition of fees or rewards of any kind to a returning officer,

Session and Chapter.	Title or Short Title.	Extent of Repeal.	Sched. 5.
17 & 18 Vic. c. 102.	The Corrupt Practices Prevention Act, 1854— (continued).	Section nine, section fourteen, section twenty three, section thirty-six, section thirty-eight, from “and the words personal expenses” to the end of the section, and section thirty-nine and Schedule A.	
21 & 22 Vic. c. 87.	An Act to continue and amend the Corrupt Practices Prevention Act, 1854.	The whole Act.	
26 & 27 Vic. c. 29.	An Act to amend and continue the law relating to corrupt practices at elections of Members of Parliament.	The whole Act, except section six.	
31 & 32 Vic. c. 102.	The Representation of the People Act, 1867.	Section thirty-four from “and in other boroughs the justices” to “greater part thereof is situate” and section thirty-six.	
31 & 32 Vic. c. 48.	The Representation of the People (Scotland) Act, 1868.	Section twenty-five.*	
31 & 32 Vic. c. 49.	The Representation of the People (Ireland) Act, 1868.	Section twelve.*	

* These two sections related to the conveyance of voters to the poll.

Sched. 5.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
31 & 32 Vic. c. 58.	The Parliamentary Electors Registration Act, 1868.	Section eighteen, from "the power of dividing their county" to the end of the section.
31 & 32 Vic. c. 125.	The Parliamentary Elections Act, 1868.	So much of section three as relates to the definitions of "candidate." Section sixteen. Section thirty-three. Section thirty-six. Section forty-one, from "but according to the same principles" to "the High Court of Chancery." Section forty-three. Section forty-five. Section forty-six. Section forty-seven. Section fifty-eight, from "The principles" down to "in the Court of session," being sub-section sixteen.
35 & 36 Vic. c. 33.	The Ballot Act, 1872 -	Section five, from the beginning down to "one hundred registered electors." Section twenty-four, from "The

Session and Chapter.	Title or Short Title.	Extent of Repeal.
35 & 36 Vic. c. 33.	The Ballot Act, 1872— (continued).	offence of personation, or of aiding," to "hard labour," and from "The offence of personation shall be deemed to be" to the end of the section.
42 & 43 Vic. c. 75.	The Parliamentary Elections and Corrupt Practices Act, 1879.	Section three and schedule.
43 Vic. c. 18 -	The Parliamentary Elections and Corrupt Practices Act, 1880.	The whole Act, except sections one and three.

APPENDIX.

The Reform Act, 1832.

2 WM. IV. c. 45.

(70.) That nothing in this Act contained shall prevent any sheriff or other returning officer, or the lawful deputy of any returning officer, from closing the poll previous to the expiration of the time fixed by this Act, in any case where the same might have been lawfully closed before the passing of this Act; and that, where the proceedings at any election shall be interrupted or obstructed by any riot or open violence, the sheriff or other returning officer, or the lawful deputy of any returning officer, shall not for such cause finally close the poll, but, in case the proceeding shall be so interrupted or obstructed at any particular polling place or places, shall adjourn the poll at such place or places only until the following day, and if necessary shall further adjourn the same until such interruption or obstruction shall have ceased, when the returning officer or his deputy shall again proceed to take the poll at such place or places, and any day whereupon the poll shall have been so adjourned shall not, as to such place or places, be reckoned *the day of polling*† at such election within the meaning of this Act; and wherever the poll shall have been so adjourned by any deputy of any sheriff or other returning officer, such deputy shall forthwith give notice of such adjournment to the sheriff or returning officer, who shall not finally declare the state of the poll, or make proclamation of the member or members chosen, until the poll so adjourned at such place or places as aforesaid shall have been finally closed, and delivered or transmitted to such sheriff or other returning officer, anything hereinbefore contained to the contrary notwithstanding.

When returning officers may close the poll before expiration of the time fixed.

Adjournment of poll in case of riot.*

* The same provisions are re-enacted by s. 8 of the 5 & 6 Wm. IV. c. 36, so as to apply also to the nomination day. See, as to Ireland, s. 18 of the 13 & 14 Vic. c. 68.

† These words were substituted by the 10 Vic. c. 15, s. 3, for the words "one of the two days of polling."

The Registration Act, 1843.

6 VIC. c. 18.

No inquiry at time of election except as to identity of the voter and whether he has already voted.

81. That in all elections whatever of a Member or Members to serve in Parliament for any county, riding, parts or divisions of a county, or for any city or borough in England or Wales, or the town of Berwick-upon-Tweed, no inquiry shall be permitted at the time of polling as to the right of any person to vote, except only as follows (that is to say)—that the returning officer or his respective deputy shall, if required on behalf of any candidate, put to any voter at the time of his tendering his vote, and not afterwards, the following questions, or either of them * :—

1. Are you the same person whose name appears as *A. B.* on the register of voters now in force for the county of [or for the riding, parts, or division of the county of], or for the city [or borough] of [as the case may be] ?
2. Have you already voted, either here or elsewhere, at this election for the county of [or as the case may be] ?

And if any person shall wilfully make a false answer to either of the questions aforesaid, he shall be deemed guilty of a misdemeanour, and shall and may be indicted and punished accordingly; and the returning officer or his deputy shall, if required on behalf of any candidate at the time aforesaid, administer an oath to any voter in the following form :—

Oath to be taken, if required.

“ You do swear [or affirm, *as the case may be*], that you are the same person whose name appears as *A. B.* on the register of voters now in force for the county of [or as the case may be], and that you have not before voted, either here or elsewhere, at the present election for the county of [or as the case may be].

“ So help you God.”

No other oath to be taken.

82. That, save as aforesaid, it shall not be lawful to require any voter at any election whatever of a Member or Members to serve in Parliament, to take any oath or affirmation, either in proof of his freehold, or his residence, age, or other qualification or right to vote, any law or statute, local or general, to the contrary notwithstanding; nor to reject any vote tendered at such election by any person whose name shall be upon the register of voters in force for the time being, except by reason

* This enactment is now extended to Scotland by the 43rd Vic. c. 18.

of its appearing to the returning officer or his deputy, upon putting such questions as aforesaid, or either of them, that the person so claiming to vote is not the same person whose name appears on such register as aforesaid, or that he had previously voted at the same election, or except by reason of such person refusing to answer the said questions or either of them, or to take the said oath, or make the said affirmation, no scrutiny shall hereafter be allowed by or before any returning officer with regard to any vote given or tendered at such election, any law, statute, or usage to the contrary notwithstanding.

No scrutiny to be allowed.

85. That it shall be lawful for any candidate at any election of a member or members to serve in Parliament for any county, city or borough, previous to the time fixed for taking the poll at such election, to nominate and appoint an agent on his behalf to attend at each or any of the booths appointed for taking the poll at such election, for the purpose of detecting personation; and such candidate shall give notice in writing to the returning officer, or his respective deputy, of the name and address of the person so appointed by him to act as agent for such purpose, and thereupon it shall be lawful for every such agent to attend during the time of polling at the booth or booths for which he shall have been so appointed.

Agents may be appointed by candidates to detect personation at the time of polling.

86. That if at the time any person tenders his vote at such election, or after he has voted and before he leave the polling booth, any such agent so appointed as aforesaid, shall declare to the returning officer, or his respective deputy, presiding therein, that he verily believes, and undertakes to prove, that the said person so voting is not in fact the person in whose name he assumes to vote or to the like effect [*or that he has already voted at the election*], then and in every such case it shall be lawful for the said returning officer, and he is hereby required, immediately after such person shall have voted, by word of mouth to order any constable or other peace officer to take the said person so voting into his custody, which said order shall be a sufficient warrant and authority to the said constable or peace officer for so doing. Provided always that nothing herein contained shall be construed or taken to authorise any returning officer, or his deputy, to reject the vote of any person who shall answer in the affirmative the questions authorised by this Act to be put to him at the time of polling, and shall take the oath or make the affirmations authorised and required of him, but the said returning officer, or his deputy, shall cause the words

Returning officers may order persons charged with personation to be taken into custody.

Vote not to be rejected if questions answered in the affirmative.

"Protested against for personation" to be placed against the vote of the person so charged with personation when entered in the poll book.

Persons charged with personation to be taken before two Justices. Bail to be taken in certain cases.

87. That every such constable or peace officer shall take the person so in his custody, at the earliest convenient time, before some two justices of the peace acting in and for the county, city or borough within which the said person shall have so voted as aforesaid: Provided always, that in case the attendance of two such justices as aforesaid cannot be procured within the space of three hours after the close of the poll on the same day on which such person shall have been so taken into custody, it shall be lawful for the said constable or peace officer, and he is hereby required, at the request of such person so in his custody, to take him before any one justice of the peace acting as aforesaid; and such justice is hereby authorised and required to liberate such person on his entering into a recognizance, with one sufficient surety, conditioned to appear before any such justices as aforesaid, at a time and place to be specified in such recognizance to answer the said charge; and if no such justice shall be found within four hours after the closing of the said poll, then such person shall forthwith be discharged from custody. Provided also, that if, in consequence of the absence of such justices as aforesaid or for any other cause, the said charge cannot be inquired into within the time aforesaid, it shall be lawful nevertheless for any two such justices as aforesaid to inquire into the same on the next or on some other subsequent day, or if necessary, to issue their warrant for the apprehension of the person so charged.

If Justices are satisfied that the person charged has been guilty of personation they are to commit him for trial.

88. That if, on the hearing of the said charge, the said two justices shall be satisfied upon the evidence on oath of not less than two credible witnesses, that the said person so brought before them has knowingly personated and falsely assumed to vote in the name of some other person within the meaning of this Act, and is not in fact the person in whose name he voted, then it shall be lawful for the two justices to commit the said offender to the gaol of the county, city or borough within which the offence was committed, to take his trial according to law, and to bind over the witnesses in their respective recognizances to appear and give evidence on such trial as in the case of other misdemeanours.

If Justices are satisfied that the charge is unfounded they

89. That if the said justices shall, on the hearing of the said charge, be satisfied that the said person so charged with personation is really and in truth the person in whose name

he voted, and that the charge of personation has been made against him without reasonable or just cause, or if the agent so declaring as aforesaid, or some one on his behalf, shall not appear to support such charge before the said justices, then it shall be lawful for the said justices, and they are hereby required to make an order in writing under their hands, on the said agent so declaring as aforesaid, to pay to the said person so falsely charged, if he shall consent to accept the same, any sum not exceeding the sum of ten pounds nor less than five pounds, by way of damages and costs; and if the said sum shall not be paid within twenty-four hours after such order shall have been made, then the same shall be levied, by warrant under the hand and seal of any justice of the peace acting as aforesaid, by distress and sale of the goods and chattels of the said agent; and in case no sufficient goods or chattels of the said agent can be found on which such levy can be made, then the same shall be levied in like manner on the goods and chattels of the candidate by whom such agent was so appointed to act; and in case the said sum shall not be paid or levied in the manner aforesaid, then it shall be lawful for the said person to whom the said sum of money was so ordered to be paid to recover the same from the said agent or candidate, with full costs of suit, in an action of debt to be brought in any one of Her Majesty's superior Courts of record at Westminster: Provided always, that if the person so falsely charged shall have declared to the said justices his consent to accept such sum as aforesaid by way of damages and costs, and if the whole amount of the sum so ordered to be paid shall have been paid or tendered to such person, in every such case, but not otherwise, the said agent, candidate, and every other person shall be released from all actions and other proceedings, civil or criminal, for or in respect of the said charge and apprehension.*

are to order
compensation.

If party falsely
charged accepts
compensation
no action to be
brought.

An Act to regulate the stations of soldiers during Parliamentary elections.

10 & 11 Vic. c. 21.

[23rd April, 1847.]

1. *Repealed 8 Geo. II. c. 30.*

2. That on every day appointed for the nomination or for the election, or for taking the poll for the election of a member or members to serve in the Commons House of Parliament, no

Soldiers to
remain in
barracks or
quarters during
election for

* The above provisions are practically re-enacted, so as to apply to Ireland, by the 13 & 14 Vic. c. 69.

Members of
Parliament
except in
certain cases.

soldier within two miles of any city, borough, town, or place, where such nomination or election shall be declared, or poll taken, shall be allowed to go out of the barrack or quarters in which he is stationed, unless for the purpose of mounting or relieving guard, or for giving his vote at such election, and that every soldier allowed to go out for any such purpose within the limits aforesaid shall return to the barrack or quarters with all convenient speed as soon as his guard shall have been relieved or vote tendered.

Notice of
elections to be
given by the
clerk of the
Crown to
Secretary at
War, &c.

3. That when and so often as any election of any member or members to serve in the Commons House of Parliament shall be appointed to be made, the clerk of the crown in chancery, or other officer, making out any new writ for such election, shall, with all convenient speed after making out the said writ, give notice thereof to the secretary at war, or in case there shall be no secretary at war, to the person officiating in his stead, who shall at some convenient time before the day appointed for such election, give notice thereof in writing to the general officer commanding in each district of Great Britain, who shall thereupon give the necessary orders for enforcing the execution of this Act in all places under his command.

Not to apply to
guards
attending Her
Majesty or to
soldiers in the
Bank.

4. Provided always, that nothing in this Act contained shall be deemed to apply to any soldiers attending as the guards of her Majesty, or any person of the Royal Family, or to the soldiers usually stationed or employed within the Bank of England.

*An Act to regulate the times of payment of rates and taxes
by Parliamentary electors.*

11 & 12 Vic. c. 90.

[31st August, 1848.]

Time at which
rates and taxes
must be paid to
entitle parties
to be on the list
of voters for
Members of
Parliament.

That no person shall be required, in order to entitle him to have his name inserted in any list of voters for any city, town, or borough in England, to have paid any poor's rates or assessed taxes, except such as shall have become payable from him previously to the fifth day of January in the same year, and that no person shall be entitled to be on any such list of voters unless the poor's rates and assessed taxes payable from him previously to the fifth day of January, shall be paid on or before the twentieth day of July next following.

An Act to provide for more effectual inquiry into the existence of corrupt practices at elections for members to serve in Parliament.

15 & 16 Vic. c. 57.

[30th June, 1852.]

WHEREAS it is expedient to make more effectual provision for inquiring into the existence of corrupt practices at elections of members to serve in Parliament: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords, spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. Where by a joint address of both Houses of Parliament, it shall be represented to Her Majesty that a *Committee of the House of Commons appointed to try an election petition, or a Committee of that House appointed to inquire into the existence of corrupt practices in any election or elections of a member or members to serve in Parliament,** have reported to the House that corrupt practices have, or that there is reason to believe that corrupt practices have, extensively prevailed in any county, division of a county, city, borough, University, or place in the United Kingdom electing or sharing in the election of a member or members to serve in Parliament, at any election or elections of such members or member, and the said Houses shall thereupon pray Her Majesty to cause inquiry to be made under this Act, by persons named in such address, such persons being (where the inquiry to be made relates to a place in England or Ireland) barristers-at-law of not less than seven years standing, or (where such inquiry relates to a place in Scotland) advocates of not less than seven years standing, and not being members of Parliament, or holding any office or place of profit under the Crown, other than that of a Recorder of any city or borough, it shall be lawful for Her Majesty, by warrant under her Royal seal manual, to appoint the said persons to be Commissioners for the purpose of making inquiry into the existence of such corrupt practices; and in case any of the Commissioners so appointed die, resign, or become incapable to act, it shall be lawful for the surviving or continuing Commissioners or Commissioner to act in such inquiry as if they or he had been solely appointed to be Commissioners or a sole Commissioner for the purposes of

Upon address of Houses of Parliament, Her Majesty may appoint Commissioners to make inquiry into corrupt practices at elections.

* Now the Election Court, consisting of two Judges.

such inquiry, and (as to such sole Commissioner) as if this Act had authorised the appointment of a sole Commissioner and all the provisions of this Act concerning the Commissioners appointed to make any such inquiry shall be taken to apply to such surviving or continuing Commissioner or Commissioners.

Commissioners
to be sworn.

2. Every Commissioner appointed in pursuance of this Act shall, before beginning to act in the execution of this Act, take the following Oath ; (that is to say),

“ I, A. B., do swear, that I will truly and faithfully execute
“ the powers and trusts vested in me by an Act
“ intituled (*here insert the title of the Act*), according
“ to the best of my knowledge and judgment. So
“ help me GOD.”

And every such Commissioner appointed in England or Ireland shall take such oath before a Justice of the Court of Queen's Bench or Common Pleas, or a Baron of the Court of Exchequer, in England or Ireland respectively; and every such Commissioner appointed in Scotland shall take such oath before a Judge of the Court of Session in Scotland.

Secretary and
clerks to be
appointed.

3. It shall be lawful for any Commissioners appointed under this Act to appoint, and at their pleasure to dismiss, a secretary, and so many clerks, messengers and officers, as shall be thought necessary by one of Her Majesty's principal Secretaries of State, for the purpose of conducting the inquiry to be made by them, and to pay to such secretary, clerks, messengers and officers, such salaries and allowances as shall be thought reasonable by the Commissioners of Her Majesty's Treasury.

Place of
meeting.

4. The Commissioners appointed under this Act to make inquiry as aforesaid in relation to any county, division of a county, city, borough, university, or place shall, upon their appointment, or within a reasonable time afterwards, go to such county, division of a county, city, borough, university, or place, and shall from time to time hold meetings for the purposes of such inquiry at some convenient place within the same, or within ten miles thereof, and shall have power to adjourn such meetings from time to time, and from any one place to any other place within such county, division of a county, city, borough, university, or place, or within ten miles thereof, as to them may seem expedient; and such Commissioners shall give notice of their appointment, and of the time and place of holding their first meeting, by publishing the same in some newspaper in general circulation in such county,

division of a county, city, borough, university, or place, or the neighbourhood thereof: Provided always, that such Commissioners shall not adjourn the inquiry for any period exceeding one week, without the consent and approbation of one of Her Majesty's principal Secretaries of State.

5. Provided also, That it shall be lawful for the said Commissioners, with such consent and approbation as aforesaid, to hold meetings of the said Commissioners in the cities of *London* or *Westminster*, and to adjourn the same from time to time, as they may deem fit.

Commissioners may hold meetings in London and Westminster.

6. Such Commissioners shall, by all such lawful means as to them appear best, with a view to the discovery of the truth, inquire into the manner in which the election in relation to which *such committee as aforesaid** may have reported to the House of Commons, or where the report of *such committee** has referred to two or more elections, the latest of such elections, has been conducted, and whether any corrupt practices have been committed at such election, and if so, whether by way of the gift or loan, or the promise of the gift or loan of any sum of money or other valuable consideration, to any voter or voters, or to any other person or persons on his or their behalf, for the promise or the giving of his or their vote or votes, or for his or their refraining or promising to refrain from giving his or their vote or votes, at such election, or for his or their procuring or undertaking to procure the votes of other electors at such election, or whether by the payment of any sum of money or loan or other valuable consideration whatsoever to any voter, or to any other person on his behalf, before, during, or after the termination of such election, by way of head money or in compliance with any usage or custom in the county, division of a county, city, borough, university, or place to which the inquiry relates, or how otherwise, or whether any sum of money or other valuable consideration whatsoever has been paid to any voter, or to any other person on his behalf, after the termination of such election, as a reward for giving or having refrained from giving his vote at such election; and in case such Commissioners find that corrupt practices have been committed at the election into which they are hereinbefore authorised to inquire, it shall be lawful for them to make the like inquiries concerning the latest previous election for the same county, division of a county, city, borough, university, or place; and upon their finding corrupt practices

Inquiry by the Commissioners.

* See previous note.

to have been committed at that election, it shall be lawful for them to make the like inquiries concerning the election immediately previous thereto for such county, division of a county, city, borough, university, or place, and so on in like manner from election to election, as far back as they may think fit*; but where upon such inquiry as aforesaid concerning any election such Commissioners do not find that 'corrupt practices have been committed thereat, they shall not inquire concerning any previous election; and such Commissioners shall from time to time report to Her Majesty the evidence taken by them, and what they find concerning the premises, and especially such Commissioners shall report with respect to each election the names of all persons whom they find to have been guilty of corrupt practice at such election, and as well of those who have given bribes, for the purchase or for the purpose of purchasing the votes of others, as of those who have themselves received money or any other valuable consideration for having given or having refrained from giving, or for the purpose of inducing them to give or to refrain from giving, their votes at such election, and also the names of all persons whom they find to have given to others, or to have received themselves, payments by way of head money, or as a reward for giving or refraining from giving their votes at such election, and all other things whereby in the opinion of the said Commissioners the truth may be better known touching the premises.

Reports to be
laid before
Parliament.

7. Every report which such Commissioners make to Her Majesty in pursuance of this Act shall be laid before Parliament within one calendar month next after such report is made, if Parliament be then sitting, or if Parliament be not then sitting, then within one calendar month next after the then next meeting of Parliament.

Power to send
for persons and
papers.

8. It shall be lawful for such Commissioners, by a summons under their hands and seals, or under the hand and seal of any one of them, to require the attendance before them at a place and time to be mentioned in the summons, which time shall be a reasonable time from the date of such summons, of any persons whomsoever whose evidence, in the judgment of such Commissioners or Commissioner, may be material to the subject-matter of the inquiry to be made by such Commissioners, and to require all persons to bring before them such books, papers, deeds and writings as to such Commissioners

* This will apply in future only to elections taking place *after* the 25th of August, 1883, since s. 40 of the C. P. Act, 1883, prohibits any inquiry into corrupt practices in respect of any election prior to the passing of that Act.

or Commissioner appear necessary for arriving at the truth of the things to be inquired into by them under this Act; all which persons shall attend such Commissioners, and shall answer all questions put to them by such Commissioners touching the matters to be inquired into by them, and shall produce all books, papers, deeds and writings required of them, and in their custody or under their control, according to the tenor of the summons: Provided always, that no statement made by any person in answer to any question put by such Commissioner shall, except in cases of indictment for perjury committed in such answers, be admissible in evidence in any proceeding, civil or criminal.

9 and 10. *Repealed by 26 & 27 Vic. c. 29.*

11. It shall be lawful for any such Commissioners, or one of them, to administer an oath, or any affirmation where an affirmation would be admitted in a Court of justice on the ground of religious scruples, to all persons who are examined before them touching the things to be inquired into by them under this Act.

Commissioners
to examine on
oath, &c.

12. If any person on whom any summons shall have been served, by the delivery thereof to him or by the leaving thereof at his usual place of abode, fail to appear before the said Commissioners at the time and place specified in such summons, it shall be lawful for the said Commissioners to certify such default under their hands and seals, or under the hand and seal of any one of them, to any of Her Majesty's superior Courts in England or Ireland, or to the Court of Session in Scotland, or to the Lord Ordinary on the Bills in the said Court, as the case may be; and thereupon such Court or Judge shall proceed against the person so failing to attend, in the same manner as if the said person had failed to obey any writ of subpoena, or any process issuing out of the said court: and if any person so summoned to attend as aforesaid, and having appeared before the said Commissioners, shall refuse to be sworn, or to make answer to such questions as are put to him touching the matters in question by the said Commissioners, or to produce and show to the said Commissioners any papers, books, deeds or writings being in his possession or under his control, which the Commissioners may deem necessary to be produced, or if any person shall be guilty of any contempt of the said Commissioners or their office, the said Commissioners shall have such and the same powers, to be exercised in the same way as any judge of any of Her Majesty's superior Courts of England or Ireland, or

Penalty for
non-attendance
or refusing to
give evidence.

of the Court of Session in Scotland, sitting under any Commission, may now by law exercise in that behalf; and all headboroughs, gaolers, constables and bailiffs shall and they are required to give their aid and assistance to the said Commissioners in the execution of their office.

Penalty for
false swearing,
&c.

13. Every person who, upon examination upon oath or affirmation before any Commissioners to be appointed under this Act, wilfully gives false evidence, shall be liable to the pains and penalties of perjury.

Expenses of
witnesses.

14. The said Commissioners shall have power, if they deem fit, to award to any witness summoned to appear before them a reasonable sum for his or her travelling expenses, and for his or her maintenance according to a scale to be determined and approved of by the Commissioners of her Majesty's Treasury, and the said Commissioners shall certify to the said Commissioners of her Majesty's Treasury the names of the said witnesses, together with the sums allowed to each, and the said Commissioners shall pay to the said witnesses the said sums so allowed as aforesaid, out of any money which may be provided by Parliament for the purposes of the said Commission.

Expenses of the
inquiry.

15. It shall be lawful for the Commissioners of her Majesty's Treasury to make an order for the payment of the necessary expenses of any inquiry under this Act; and every Commissioner to be appointed under this Act shall be paid, at the conclusion of the inquiry, over and above his travelling and other expenses, such sum as the Commissioners of her Majesty's Treasury think fit; and any Commissioners so appointed shall, after the termination of their last sitting, and after they have made their report to her Majesty, as herein-before directed, lay or cause to be laid before the Commissioners of her Majesty's Treasury a statement of the number of days they have been actually employed in the inquiry made by them, together with an account of the travelling and other expenses of each of such Commissioners; and the Commissioners of her Majesty's Treasury shall make an order for the payment to each Commissioner of the sum which the Commissioners of her Majesty's Treasury so think fit to be paid to him, and in respect of his travelling and other expenses, which said payments shall be made out of any money which may be provided by Parliament for that purpose.

Protection of
Commissioners.

16. That the Commissioners shall have such and the like protection and privileges, in case of any action brought against them for any act done or omitted to be done in the execution

of their duty, as is now by law given by any Act or Acts now or hereafter to be in force to justices acting in execution of their office.

17. No action shall be brought against any Commissioners appointed under this Act, or any other person whomsoever, for any thing done in the execution of this Act, unless such action be brought within six calendar months next after the doing of such thing. Limitation of actions.

An Act to limit the Time for proceeding to Election in Counties and Boroughs in England and Wales, and for Polling at Elections for the Universities of Oxford and Cambridge, and for other Purposes.

16 & 17 Vic. c. 68.

[15th August, 1853.]

WHEREAS it is expedient to alter the law respecting the direction and return of writs for the election of members of Parliament in certain cases: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords, spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that—

1. The writ for any election hereafter to be directed to the sheriff of any county in England or Wales (other than the county of a city or of a town) shall require such sheriff to cause election to be made of a knight or knights to serve in Parliament for such county, and for any riding, parts, or division thereof only, and not further or otherwise; the writ for making any election of a member or members to serve in Parliament for the universities of Oxford and Cambridge, and for every borough, town corporate, port, or place returning members to serve in Parliament in England and Wales, shall hereafter be directed to the Vice-Chancellors of the said universities, and to the returning officers of such boroughs, towns corporate, ports, and places respectively, and such Vice-Chancellors and returning officers shall thereupon in due course of law proceed to election, and after such election certify the same, together with the writ, according to the directions thereof; all such writs hereafter to be issued, and all mandates, precepts, instruments, proceedings and notices consequent upon such writs, shall be and the same are hereby authorised to be framed and expressed in such manner and

Writs to the sheriffs of counties to require them to make election for their counties only.

Writs for the election in the Universities of Oxford and Cambridge and in Boroughs, to be directed to the Returning Officers thereof.

Writs, &c., to be made conformable to this Act.

form as may be necessary for carrying the provisions of this Act into effect.

2 & 3. *Repealed by the Ballot Act, 1872.*

Polling at the Universities to continue for five days only.

4. At any election of a member or members to serve in Parliament, for either of the Universities of Oxford and Cambridge, the polling shall not continue for more than five days at the most, Sunday, Christmas Day, Good Friday and Ascension Day being excluded.

Vice-Chancellors to appoint additional polling places, and appoint pro-Vice-Chancellors, &c., for conducting the poll.

5. At every such election the Vice-Chancellor shall have power to appoint any number of polling places not exceeding three, in addition to the House of Convocation or Senate House, and to direct at which of such polling places the Members of Convocation and of the Senate according to their colleges shall vote, and also to appoint any number of *pro* Vice-Chancellors, any one of whom may receive the votes and decide upon all questions during the absence of such Vice-Chancellor; and such Vice-Chancellor shall have power to appoint any number of poll clerks and other officers, by one or more of whom the votes shall be entered in such number of poll books as shall be judged necessary by such Vice-Chancellor.

Polls not to be taken at inns, &c., without consent of all the candidates.

6. No poll at any election for Members of Parliament in England and Wales shall be taken at any inn, hotel, tavern, public-house, or other premises licensed for the sale of beer, wine, or spirits, or in any booth, hall, room, or other place directly communicating therewith, unless by consent of all the candidates expressed in writing.

7 and 8. *Repealed by the Ballot Act, 1872.*

An Act to consolidate and amend the Laws relating to bribery, treating, and undue influence at elections of Members of Parliament.

17 & 18 Vic. c. 102.

[10th August, 1854.]

1. *Repealed by C. P. Act, 1883.*

2, 3. (So far as unrepealed) see *Sched. I., Part 3, of C. P. Act, 1883, supra, p.*

4-6. *Repealed by C. P. Act, 1883.*

No cockades, &c., to be given at elections.

7. No candidate before, during, or after any election shall in regard to such election, by himself or agent, directly or indirectly, give or provide to or for any person having a vote

at such election, or to or for any inhabitant of the county, city, borough, or place for which such election is had, any cockade, ribbon, or other mark of distinction; and every person so giving or providing shall for every such offence forfeit the sum of Two Pounds to such person as shall sue for the same, together with full costs of suit. Penalty.

8. No person having a right to vote at the election for any county, city, borough, or other place shall be liable or compelled to serve as a special constable at or during any election for a member or members to serve in Parliament for such county, city, borough, or other place, unless he shall consent so to act; and he shall not be liable to any fine, penalty, or punishment whatever for refusing so to act, any statute, law, or usage to the contrary notwithstanding. Voters not compellable to serve as special constables during elections.

9. *Repealed by C. P. Act, 1883.*

10. It shall be lawful for any Criminal Court, before which any prosecution shall be instituted for any offence against the provisions of this Act, to order payment to the prosecutor of such costs and expenses as to the said Court shall appear to have been reasonably incurred in and about the conduct of such prosecution: Provided always that no indictment for bribery or undue influence shall be triable before any Court of Quarter Sessions. Costs and expenses of prosecutions.

11. *Repealed by Ballot Act, 1872.*

12. In case of any indictment or information by a private prosecutor for any offence against the provisions of this Act, if judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the costs sustained by the defendant by reason of such indictment or information, such costs to be taxed by the proper officer of the Court in which such judgment shall be given. In cases of private prosecutions, if judgment be given for the defendant, he shall recover costs from the prosecutor.

13. It shall not be lawful for any Court to order payment of the costs of a prosecution for any offence against the provisions of this Act, unless the prosecutor shall, before or upon the finding of the indictment or the granting of the information, enter into a recognizance, with two sufficient sureties, in the sum of Two Hundred Pounds (to be acknowledged in like manner as is now required in cases of writ of certiorari awarded at the instance of a defendant in an indictment), with the conditions following: that is to say, that the prosecutor shall conduct the prosecution with effect, and shall pay to the defendant or defendants, in case he or they shall be acquitted, his or their costs. Prosecutor not to be entitled to costs unless he shall have entered into a recognizance to conduct prosecution and pay costs

14. *Repealed by C. P. Act, 1883.*

15-22. *Repealed by the 26 & 27 Vic. c. 29.*

23. *Repealed by C. P. Act, 1883.*

24-34. *Repealed by the 26 & 27 Vic. c. 29.*

In actions for penalties, parties, &c. to be competent witnesses.

35. On the trial of any action for recovery of any pecuniary penalty under this Act, the parties to such action, and the husbands and wives of such parties respectively, shall be competent and compellable to give evidence in the same manner as parties, and their husbands and wives, are competent and compellable* to give evidence in actions and suits under the Act of the 14th & 15th Vic. cap. 99, and the Evidence Amendment Act, 1853, but subject to and with the exceptions contained in such several Acts: Provided always that any such evidence shall not thereafter be used in any indictment or criminal proceeding under this Act against the party giving it.

36. *Repealed by C. P. Act, 1883.*

Short title.

37. In citing this Act in any instrument, document or proceeding, or for any purposes whatsoever, it shall be sufficient to use the expression "The Corrupt Practices Prevention Act, 1854."

Interpretation of terms.

38. Throughout this Act, in the construction thereof, except there be something in the subject or context repugnant to such construction, the word "county" shall extend to and mean any county, riding, parts, or division of a county stewardry, or combined counties respectively returning a member or members to serve in Parliament; and the words "city or borough" shall mean any university, city, borough, town corporate, county of a city, county of a town, cinque port, district of a burgh, or other place or combination of places (not being a county as hereinbefore defined) returning a member or members to serve in Parliament; and the word "election" shall mean the election of any member or members to serve in Parliament; and the words "returning officer" shall apply to any person or persons to whom, by virtue of his or their office under any law, custom or statute the execution of any writ or precept doth or shall belong for the election of a member or members to serve in Parliament by whatever name or title such person or persons may be called; and the words "revising barrister" shall extend to and include an assistant barrister and chairman, presiding in any Court held for the revision of the lists of voters or his deputy

* See note (b) to s. 53 (2).

in Ireland, and a sheriff or sheriff's Court of Appeal in Scotland, and every other person whose duty it may be to hold a Court for the revision and correction of the list or registers of voters in any part of the United Kingdom; and the word "voter" shall mean any person who has or claims to have a right to vote in the election of a member or members to serve in Parliament; and the words "candidate at an election" shall include all persons elected as members to serve in Parliament at such election, and all persons nominated as candidates, or who shall have declared themselves candidates at or before such election.

39. *Repealed by C. P. Act, 1883.*

*An Act to provide that votes at elections for the Universities may be recorded by means of voting papers.**

24 & 25 Vic. c. 53.

[1st August, 1861.

Sections 1 and 2 provide for the recording of votes by the electors by means of voting papers.

Section 3 permits the inspection of voting papers by any person now entitled to object to votes.

Section 4 provides for the filing and preservation of all votes recorded, which are to be open to public examination, and may be copied on payment of a fee of one shilling.

Section 5 enacts as follows :—"Any person falsely or fraudulently signing any voting paper in the name of any other person, either as a voter or as a witness, whether such other person shall be living or dead, and every person signing, subscribing, endorsing, attesting, certifying, tendering or transmitting as genuine any false or falsified voting paper, knowing the same to be false or falsified, and any person falsely making any such declaration as aforesaid, or such declaration as is contained in the schedule, or with fraudulent intent altering, defacing, destroying, withholding or abstracting any voting paper, and any person wilfully making a false answer to any question put to him by the returning or other officer as hereinbefore provided, shall be guilty of a misdemeanour, and punishable by fine, or imprisonment for a term not exceeding one year."

Penalty for
falsely signing
voting papers.

* Amended by the 31 & 32 Vic. c. 65. See as to elections for the University of London, R. P. Act, 1867, ss.41-46. Section 45 extends to such elections the provisions of this Act.

An Act to amend and continue the law relating to Corrupt Practices at elections of Members of Parliament.

26 & 27 VIC. c. 29.

[8th June, 1863.

See s. 6 of this Act, the only one remaining unrepealed, at p. 269.

An Act further to amend the Laws relating to the Representation of the People in England and Wales.

30 & 31 VIC. c. 102.*

[15th August, 1867.

WHEREAS it is expedient to amend the laws relating to the representation of the people in *England and Wales* :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords, spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title.

1. This Act shall be cited for all purposes as "The Representation of the People Act, 1867."

Application of Act.

2. This Act shall not apply to *Scotland* or *Ireland*, nor in anywise affect the election of members to serve in Parliament for the Universities of *Oxford* or *Cambridge*.

No elector who has been employed for reward within six months of an election to be entitled to vote.

11. No elector who within six months before or during any election for any county or borough shall have been retained, hired, or employed for all or any of the purposes of the election for reward by or on behalf of any candidate at such election as agent, canvasser, clerk, messenger, or in other like employment, shall be entitled to vote at such election, and if he shall so vote he shall be guilty of a misdemeanour.

Registration of Voters.

Regulation to be observed as to registration of voters.

30. The following regulations shall in and after the year One thousand eight hundred and sixty-eight be observed with respect to the registration of voters :—

1. The overseers of every parish or township shall make out or cause to be made out a list of all persons on whom a right to vote for a county in respect of the occupation of premises is conferred by this Act, in the same manner, and subject to the same

* Only those parts of this Act material to the subject in hand are here given.

regulations, as nearly as circumstances admit, in and subject to which the overseers of parishes and townships in boroughs are required by the Registration Acts to make out or cause to be made out a list of all persons entitled to vote for a member or members for a borough in respect of the occupation of premises of a clear yearly value of not less than ten pounds : *

2. The claim of every person desirous of being registered as a voter for a member or members to serve for any borough in respect of the occupation of lodgings shall be in the form numbered 1 in Schedule (G), or to the like effect, and shall have annexed thereto a declaration in the form and to be certified in the manner in the said schedule mentioned, or as near thereto as circumstances admit; and every such claim shall, after the last day of July and on or before the twenty-fifth day of August in any year, be delivered to the overseers of the parish in which such lodgings shall be situate, and the particulars of such claim shall be duly published by such overseers on or before the first day of September next ensuing in a separate list, according to the form numbered 2 in the said Schedule (G).

So much of section 18 of the Act of the session of the sixth year of the reign of her present Majesty, chapter eighteen, as relates to the manner of publishing list of claimants, and to the delivery of copies thereof to persons requiring the same, shall apply to every such claim and list; and all the provisions of the 38th and 39th sections of the same Act with respect to the proof of the claims of persons omitted from the lists of voters, and to objections thereto, and to the hearing thereof, shall, so far as the same are applicable, apply to claims and objections, and to the hearing thereof under this section.

31. The word "expenses" contained in the sections fifty- Definition of

* Section 17 of the 31 & 32 Vic. c. 58, after reciting this clause, and that by s. 59 the Act was to be construed as one with the Registration Acts, and that doubts had arisen as to the construction of the same, declares that s. 15 of 6 Vic. c. 18 shall apply to the list of persons on whom a right to vote for a county in respect of the occupation of premises is conferred by the R. P. Act, 1867, in the same manner as if the list of voters in the said 15th section referred to were the list of voters made in pursuance of the above s. 30, instead of the list of voters for a city or borough as specified in the said s. 15.

"Expenses of
Registration."

four and fifty-five of the said Registration Act of the session of the sixth year of the reign of Her present Majesty, chapter eighteen, shall be deemed to and shall include and apply to all proper and reasonable fees and charges of any clerk of the peace or any county, or of any town clerk of any city or borough, to be hereafter made or charged by him in any year for his trouble, care, and attention in the performance of the services and duties imposed upon him by the same Act or by this Act, in addition to any money actually paid or disbursed by him for or in respect of any such services or duties as aforesaid.

Provision for
increased
polling places
in counties, &c.

34. In every county the justices of the peace having jurisdiction therein or in the larger part thereof, assembled at some Court of general or quarter sessions, or at some adjournment thereof, held after the passing of this Act, may, if they think convenience requires it,* divide such county into polling districts, and assign to each district a polling place, in such manner as to enable each voter, as far as practicable, to have a polling place within a convenient distance of his residence; and the justices shall advertise, in such manner as they think fit, a description of the polling districts so constituted by them, and the name of the polling place assigned to each district, and shall name the polling places at which the revising barristers are to hold their Courts, and no revising barrister shall be obliged to hold his Courts at any polling places not so named: Provided that the justices of the peace for the Isle of Ely, assembled as aforesaid, shall carry into effect the provisions of this section so far as regards the said Isle of Ely; but nothing herein contained shall affect the powers conferred by any other Act of Parliament of altering polling places or polling districts, or of creating additional polling places or districts:—

Proviso as to
Isle of Ely.

The Local Authority of every borough shall, if they think convenience requires it, as soon as may be after the passing of this Act, divide such borough into polling districts, and the returning officer shall in the case of a contested election provide at least one booth or room for taking the poll in each polling district; and in cases where a Parliamentary borough is constituted of two or more towns, the distance between two of which shall exceed two miles, there shall be provided a booth or room for taking the poll in each of such towns;

* See s. 47 of C. P. Act, 1883, which renders imperative the providing of the requisite number of polling places.

Where any parish in a borough is divided into or forms part of more than one polling district, the overseers shall, so far as practicable, make out the lists of voters in such manner as to divide the names in conformity with each polling district;

The town clerk,* as defined by the Act of the sixth Victoria, chapter eighteen, shall cause the lists of voters for each borough to be copied, printed, arranged, and signed, and delivered in the manner directed by the said Act, so as to correspond with the division of the borough into polling districts;

A description of the polling districts made or altered in pursuance of this Act shall be advertised by the local authority in such manner as they think fit, and notice of the situation, division, and allotment of the polling booth or place for each district shall be given in manner now required by law;

The local authority* shall mean in every municipal borough, and in every borough any part of which forms a municipal borough, the town council of such borough; and in cases where a Parliamentary borough is constituted by the combination of two or more municipal boroughs, then the local authority shall mean the town council of that municipal borough in which the nomination takes place;

The local authority may from time to time alter any districts made by them under this Act.

36. *Repealed by C. P. Act, 1883.*

37. At every contested election for any county or borough, unless some building or place belonging to the county or borough is provided for that purpose, the returning officer shall, whenever it is practicable so to do, instead of erecting a booth, hire a building or room for the purpose of taking the poll.†

Rooms to be hired for taking polls wherever they can be obtained.

38. The forty-seventh and forty-eighth sections of the Act of the sixth year of the reign of her present Majesty, chapter eighteen, relating to the transmission and delivery of the book or books containing the lists of voters to the sheriff and returning officer, shall be construed as if the word "December"

Alteration as to time for delivery of lists and commencement of register of voters.

* See amendment of this section in 31 & 32 Vic. c. 58, s. 18, *infra* p. 349.

† See also s. 6 of the Ballot Act, 1872.

were substituted in those sections for the word "November," and the said book or books shall be the register of persons entitled to vote for the county or borough to which such register relates at any election which takes place during the year commencing on the first day of January next after such register is made, and the register of electors in force at the time of the passing of this Act shall be the register in force until the first day of January, one thousand eight hundred and sixty-eight.

Receipt of
parochial relief
to apply to
counties as well
as boroughs.

40. The thirty-sixth section of the Act of the second year of King William the Fourth, chapter forty-five, disqualifying persons in receipt of parochial relief from being registered as voters for a borough, shall apply to a county also, and the said section shall be construed as if the word "county" were inserted therein before the word "city;" and the overseers of every parish shall omit from the lists made out by them of persons entitled to vote for the borough and county in which such parish is situate the names of all persons who have received parochial relief within twelve calendar months next previous to the last day of July in the year in which the list is made out.

Corrupt
payment of
rates to be
punishable as
bribery.

49. Any person, either directly or indirectly, corruptly paying any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote at any future election, and any candidate or other person, either directly or indirectly, paying any rate on behalf of any voter for the purpose of inducing him to vote or refrain from voting, shall be guilty of bribery, and be punishable accordingly; and any person on whose behalf and with whose privity any such payment as in this section is mentioned is made shall also be guilty of bribery, and punishable accordingly.

Returning
officer, &c.,
acting as agent
guilty of
misdemeanour.

50. No returning officer for any county or borough, nor his deputy, nor any partner or clerk of either of them, shall act as agent for any candidate in the management or conduct of his election as a member to serve in Parliament for such county or borough; and if any returning officer, his deputy, the partner or clerk of either of them, shall so act, he shall be guilty of a misdemeanour.

Not necessary
to dissolve
Parliament on
any future
demise of the
Crown.

51. Whereas great inconvenience may arise from the enactments now in force limiting the duration of the Parliament in being at the demise of the Crown: Be it therefore enacted, That the Parliament in being at any future demise of the Crown shall not be determined or dissolved by such demise,

but shall continue so long as it would have continued but for such demise, unless it should be sooner prorogued or dissolved by the Crown, anything in the Act passed in the Sixth Year of Her Majesty Queen Anne, chapter seven, in any way notwithstanding.

58. All writs to be issued for the election of members to serve in Parliament, and all mandates, precepts, instruments, proceedings, and notices consequent upon such writs or relating to the registration of voters, shall be framed and expressed in such manner and form as may be necessary for the carrying the provisions of this Act into effect.

Writs, &c., to be made conformable to this Act.

The Representation of the People (Scotland) Act, 1868.

31 & 32 Vic. c. 48.

Section 8 (*Employment of voters*) is the same as s. 11 of R. P. Act, 1867.

Section 49 (*Corrupt payment of rates*). See Schedule 3, Part iii., *supra*, p. 320.

The Representation of the People (Ireland) Act, 1868.

31 & 32 Vic. c. 49.

Section 8 (*Employment of voters*) same as s. 11 of R. P. Act, 1867.

Section 13 (*Returning officer &c., not to act as agent*) same as R. P. Act, 1867, s. 50. There is no similar provision in the Scotch Act.

Amendment of the R. P. Act, 1867.

31 & 32 Vic. c. 58, s. 18.

18. Where a municipal borough forms part of a Parliamentary borough, the town clerk of such municipal borough shall be deemed to be the town clerk within the meaning of the thirty-fourth section of the "Representation of the People Act, 1867," and the Acts relating to registration. The local authority within the meaning of the same section in boroughs where the town council is not the local authority, shall be the Justices of the Peace of the petty sessional division in which such borough is situate, or, if such borough be situate in or comprise more than one petty sessional division, then the Justices in general or quarter sessions having jurisdiction over such borough or the greater part thereof in area.

Amendment of s. 34 of 30 & 31 Vic. c. 102.

Section 23, providing a summary remedy for the recovery of expenses by town clerks and returning officers, enacts that it shall be lawful for any justice of the peace . . . upon information and complaint in writing, and after seven days notice in writing to be served upon the overseers, or one of them by warrant under his hand to levy such contribution or sum by distress, &c.

Section 37 provides for printed copies of the registers to be transmitted to a Secretary of State by the clerk of the peace, town clerk or other officer having charge of the same, every year within 21 days after the 1st of February.

An Act for amending the Laws relating to Election Petitions, and providing more effectually for the prevention of Corrupt Practices at Parliamentary Elections.

31 & 32 VIC. c. 125.

[31st July, 1868.]

WHEREAS it is expedient to amend the laws relating to election petitions, and to provide more effectually for the prevention of corrupt practices at Parliamentary elections :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords, spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

Short title of Act.

1. This Act may be cited for all purposes as the "Parliamentary Elections Act, 1868."

Definition and jurisdiction of Court.

2. The expression "the Court" shall, for the purposes of this Act, in its application to England mean the Court of Common Pleas at Westminster, and in its application to Ireland the Court of Common Pleas at Dublin; and such Court shall, subject to the provisions of this Act, have the same powers, jurisdiction and authority with reference to an election petition, and the proceedings thereon, as it would have in such petition were an ordinary cause within their jurisdiction.

Interpretation of terms.

3. The following terms shall in this Act have the meanings hereinafter assigned to them, unless there is something in the context repugnant to such construction; (that is to say,)

"Metropolitan District."

"Metropolitan District" shall mean the City of London and the liberties thereof, and any parish or place subject to the jurisdiction of the Metropolitan Board of Works :

"Election" shall mean an election of a member or "Election." members to serve in Parliament :

"County" shall not include a county of a city or county "County." of a town, but shall mean any county, riding, parts, or division of a county returning a member or members to serve in Parliament :

"Borough" shall mean any borough, university, city, "Borough," place, or combination of places, not being a county as hereinbefore defined, returning a member or members to serve in Parliament :

"Corrupt Practices" or "Corrupt Practice" shall mean "Corrupt Practices." bribery, treating, and undue influence, or any of such offences, as defined by Act of Parliament, or recognised by the Common Law of Parliament :

"Rules of Court" shall mean rules to be made as herein- "Rules of Court." after mentioned :

"Prescribed" shall mean "prescribed by the Rules of "Prescribed." Court."

4. For the purposes of this Act "Speaker" shall be deemed to include Deputy Speaker; and when the office of Speaker is vacant, the Clerk of the House of Commons, or any other officer for the time being performing the duties of the Clerk of the House of Commons, shall be deemed to be substituted for and to be included in the expression "the Speaker." Provision as to Speaker.

Presentation and service of Petition.

5. From and after the next dissolution of Parliament a petition complaining of an undue return or undue election of a member to serve in Parliament for a county or borough may be presented to the Court of Common Pleas at Westminster, if such county or borough is situate in England, or to the Court of Common Pleas at Dublin, if such county or borough is situate in Ireland, by any one or more of the following persons :

1. Some person who voted or who had a right to vote at the election to which the petition relates ; or,
2. Some person claiming to have had a right to be returned or elected at such election ; or,
3. Some person alleging himself to have been a candidate at such election ;

And such petition is hereinafter referred to as an election petition.

To whom and by whom election petition may be presented.

6. The following enactments shall be made with respect to the presentation of an election petition under this Act :

1. The petition shall be signed by the petitioner, or all the petitioners if more than one :
2. The petition shall be presented within twenty-one days after the return has been made to the Clerk of the Crown in Chancery in England, or to the Clerk of the Crown and Hanaper in Ireland, as the case may be, of the member to whose election the petition relates, unless it question the return or election upon an allegation of corrupt practices, and specifically alleges a payment of money or other reward to have been made by any member, or on his account, or with his privity, since the time of such return, in pursuance or in furtherance of such corrupt practices, in which case the petition may be presented at any time within twenty-eight days after the date of such payment :
3. Presentation of a petition shall be made by delivering it to the prescribed officer, or otherwise dealing with the same in manner prescribed.
4. At the time of the presentation of the petition, or within three days afterwards, security for the payment of all costs, charges, and expenses that may become payable by the petitioner—
 - (a) To any person summoned as a witness on his behalf, or,
 - (b) To the member whose election or return is complained of (who is hereinafter referred to as the respondent),
 shall be given on behalf of the petitioner.
5. The security shall be to an amount of One thousand pounds : it shall be given either by recognizance to be entered into by any number of sureties not exceeding four, or by a deposit of money in manner prescribed, or partly in one way and partly in the other.

Regulations as to presentation of election petition.

Copy of petition after presentation to be sent to returning officer.

Recognizance may be objected to.

7. On presentation of the petition, the prescribed officer shall send a copy thereof to the returning officer of the county or borough to which the petition relates, who shall forthwith publish the same in the county or borough, as the case may be.

8. Notice of the presentation of a petition under this Act, and of the nature of the proposed security, accompanied with

a copy of the petition, shall, within the prescribed time, not exceeding five days after the presentation of the petition, be served by the petitioner on the respondent; and it shall be lawful for the respondent, where the security is given wholly or partially by recognizance, within a further prescribed time, not exceeding five days from the date of the service on him of the notice, to object in writing to such recognizance, on the ground that the sureties, or any of them, are insufficient, or that a surety is dead, or that he cannot be found or ascertained from the want of a sufficient description in the recognizance, or that a person named in the recognizance has not duly acknowledged the same.

9. Any objection made to the security given shall be heard and decided on in the prescribed manner. If an objection to the security is allowed it shall be lawful for the petitioner, within a further prescribed time, not exceeding five days, to remove such objection, by a deposit in the prescribed manner of such sum of money as may be deemed by the Court or officer having cognizance of the matter to make the security sufficient.

Determination of objection to recognizance.

If on objection made, the security is decided to be insufficient, and such objection is not moved in manner hereinbefore mentioned, no further proceedings shall be had on the petition; otherwise, on the expiration of the time limited for making objections, or, after objection made, on the sufficiency of the security being established, the petition shall be deemed to be at issue.

List of petitions at issue to be made.

10. The prescribed officer shall, as soon as may be, make out a list of all petitions under this Act presented to the Court of which he is such officer, and which are at issue, placing them in the order in which they were presented, and shall keep at his office a copy of such list, hereinafter referred to as the election list, open to the inspection in the prescribed manner of any person making application.

Such petitions, as far as conveniently may be, shall be tried in the order in which they stand in such list.

Trial of a Petition.

11. The following enactments shall be made with respect to the trial of election petitions under this Act:

Mode of trial of election petitions.

1. The trial of every election petition shall be conducted before a Puisne Judge * of one of Her Majesty's

* Now two Judges; see 42 & 43 Vic. c. 75.

superior Courts of common law at Westminster or Dublin, according as the same shall have been presented to the Court at Westminster or Dublin, to be selected from a rota to be formed as herein-after mentioned.

2. The members of each of the Courts of Queen's Bench, Common Pleas, and Exchequer in England and Ireland shall respectively, on or before the third day of Michaelmas Term in every year, select, by a majority of votes, one of the Puisne Judges of such Court, not being a member of the House of Lords, to be placed on the rota for the trial of election petitions during the ensuing year.*
3. If in any case the members of the said Court are equally divided in their choice of a Puisne Judge to be placed on the rota, the Chief Justice of such Court (including under that expression the Chief Baron of the Exchequer) shall have a second or casting vote.
4. Any Judge placed on the rota shall be re-eligible in the succeeding or any subsequent year.
5. In the event of the death or the illness of any Judge for the time being on the rota, or his inability to act for any reasonable cause, the Court to which he belongs shall fill up the vacancy by placing on the rota another Puisne Judge of the same Court.
6. The judges for the time being on the rota shall, according to their seniority, respectively try the election petitions standing for trial under this Act, unless they otherwise agree among themselves, in which case the trial of each election petition shall be taken in manner provided by such agreement.
7. Where it appears to the Judges on the rota, after due consideration of the list of petitions under this Act for the time being at issue, that the trial of such election petitions will be inconveniently delayed unless an additional Judge or Judges be appointed to assist the Judges on the rota, each of the said Courts (that is to say), the Court of Exchequer, the Court of Common Pleas and Court of Queen's Bench, in the order named, shall, on and according to the requisition of such Judges on the rota, select,

* See the new provisions of the Supreme Court of Judicature Act, 1881, s. 13, *infra* p. 416.

in manner hereinbefore provided, one of the Puisne Judges of the Court to try election petitions for the ensuing year; and any Judge so selected shall, during that year, be deemed to be on the rota for the trial of election petitions.

8. Her Majesty may, in manner heretofore in use, appoint an additional Puisne Judge to each of the Courts of Queen's Bench, the Common Pleas, and the Exchequer in England.
9. Every election petition shall, except where it raises a question of law for the determination of the Court, as hereinafter mentioned, be tried by one of the Judges hereinbefore in that behalf mentioned, hereinafter referred to as the Judge sitting in open Court without a jury.
10. Notice of the time and place at which an election petition will be tried shall be given, not less than fourteen days before the day on which the trial is held, in the prescribed manner.
11. The trial of an election petition in the case of a petition relating to a borough election shall take place in the borough, and in the case of a petition relating to a county election in the county; Provided always, that if it shall appear to the Court that special circumstances exist which render it desirable that the petition should be tried elsewhere than in the borough or county, it shall be lawful for the Court* to appoint such other place for the trial as shall appear most convenient: Provided also, that in the case of a petition relating to any of the boroughs within the Metropolitan District, the petitioner may be heard at such place within the district as the Court may appoint.
12. The Judge presiding at the trial may adjourn the same from time to time and from any one place to any other place within the county or borough, as to him may seem expedient.
13. At the conclusion of the trial the Judge who tried the petition shall determine whether the member whose return or election is complained of, or any and what other person was duly returned or elected, or whether the election was void, and shall forthwith certify in writing such determination to the

* *i.e.* Both Judges (*Collins v. Price*, 5 C. P. D. 685).

Speaker, and upon such certificate being given such determination shall be final to all intents and purposes.

14. Where any charge is made in an election petition of any corrupt practice having been committed at the election to which the petition refers, the Judge shall, in addition to such certificate, and at the same time report in writing to the Speaker as follows :—

- (a) Whether any corrupt practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at such election, and the nature of such corrupt practice ;
- (b) The names of all persons (if any) who have been proved at the trial to have been guilty of any corrupt practice ;
- (c) Whether corrupt practices have, or whether there is reason to believe that corrupt practices have, extensively prevailed at the election to which the petition relates.

15. The Judge may at the same time make a special report to the Speaker as to any matters arising in the course of the trial, an account of which in his judgment ought to be submitted to the House of Commons.

16. Where, upon the application of any party to a petition made in the prescribed manner to the Court, it appears to the Court that the case raised by the petition can be conveniently stated as a special case, the Court may direct the same to be stated accordingly, and any such special case shall, as far as may be, be heard before the Court, and the decision of the Court shall be final ; and the Court shall certify to the Speaker its determination in reference to such special case.

Applications
to the Court
respecting
trials.

12. Provided always, that if it shall appear to the Judge on the trial of the said petition that any question or questions of law as to the admissibility of evidence or otherwise require further consideration by the Court of Common Pleas, then it shall be lawful for the said Judge to postpone the granting of the said certificate until the determination of such question or questions by the Court, and for this purpose to reserve any such question or questions in like manner as questions are usually reserved by a Judge on a trial at Nisi Prius.

13. The House of Commons, on being informed by the Speaker of such certificate and report or reports, if any, shall order the same to be entered in their journals, and shall give the necessary directions for confirming or altering the return, or for issuing a writ for a new election, or for carrying the determination into execution, as circumstances may require.

House of Commons to carry out report.

14. Where the Judge makes a special report the House of Commons may make such order in respect of such special report as they think proper.

House of Commons may make order on special Report.

15. If the Judge states in his report on the trial of an election petition under this Act that corrupt practices have, or that there is reason to believe that corrupt practices have, extensively prevailed in any county or borough at the election to which the petition relates, such statement shall for all the purposes of the Act of the session of the fifteenth and sixteenth years of the reign of Her present Majesty, chapter fifty-seven, intituled "An Act to provide for more effectual inquiry into the existence of corrupt practices at elections of members to serve in Parliament," have the same effect and may be dealt with in the same manner as if it were a report of a committee of the House of Commons appointed to try an election petition, and the expenses of any commission of inquiry which may be issued in accordance with the provisions of the said Act shall be defrayed as if they were expenses incurred in the registration of voters for such county or borough.

Report of the Judge as to corrupt practices.

16. *Repealed by C. P. Act, 1883.*

17. On the trial of an election petition under this Act, unless the Judge otherwise directs, any charge of a corrupt practice may be gone into and evidence in relation thereto received before any proof has been given of agency on the part of any candidate in respect of such corrupt practice.

Evidence of corrupt practices how received.

18. The trial of an election petition under this Act shall be proceeded with notwithstanding the acceptance by the respondent of an office of profit under the Crown.

Acceptance of office not to stop petition.

19. The trial of an election petition under this Act shall be proceeded with notwithstanding the prorogation of Parliament.

Prorogation of Parliament.

Proceedings.

20. An election petition under this Act shall be in such form and state such matters as may be prescribed.

Form of petition.

21. An election petition under this Act shall be served as nearly as may be in the manner in which a writ or summons is served, or in such other manner as may be prescribed.

Service of petition.

Joint
respondents
to petition.

22. Two or more candidates may be made respondents to the same petition, and their case may, for the sake of convenience, be tried at the same time; but for all the purposes of this Act such petition shall be deemed to be a separate petition against each respondent.

Provision in
cases where
more than one
petition is
presented.

23. Where, under this Act, more petitions than one are presented relating to the same election or return, all such petitions shall in the election list be bracketed together, and shall be dealt with as one petition, but such petition shall stand in the election list in the place where the last of such petitions would have stood if it had been the only petition presented, unless the Court shall otherwise direct.

Shorthand
writer to attend
trial of election
petition.

24. On the trial of an election petition under this Act the shorthand writer of the House of Commons or his deputy shall attend and shall be sworn by the Judge faithfully and truly to take down the evidence given at the trial, and from time to time as occasion requires to write or cause the same to be written in words at length; and it shall be the duty of such shorthand writer to take down such evidence, and from time to time write or cause the same to be written at length, and a copy of such evidence shall accompany the certificate made by the judge to the Speaker; and the expenses of the shorthand writer shall be deemed to be part of the expenses incurred in receiving the Judge.

Jurisdiction and Rules of Court.

Rules to be
made by
Court.

25. The Judges for the time being on the rota for the trial of election petitions in England and Ireland may respectively from time to time make, and may from time to time revoke and alter, general rules and orders (in this Act referred to as the Rules of Court), for the effectual execution of this Act, and of the intention and object thereof, and the regulation of the practice, procedure, and costs of election petitions, and the trial thereof, and the certifying and reporting thereon.*

Any General Rules and Orders made as aforesaid shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if they were enacted in the body of this Act.

Any General Rules and Orders made in pursuance of this section shall be laid before Parliament within three weeks after they are made, if Parliament be then sitting, and if

* The Rules at present in force under this Act may be obtained on application at the Parliamentary and Municipal Elections Office, Royal Courts of Justice. They have been omitted from the present edition because they could only be reproduced in a form which would be, under the new Act, at best incomplete; and there is reason to expect that before long an amended and complete code will be issued.

Parliament be not then sitting, within three weeks after the beginning of the then next Session of Parliament.

26. Until Rules of Court have been made in pursuance of this Act, and so far as such Rules do not extend, the principles, practice, and rules on which committees of the House of Commons have heretofore acted in dealing with election petitions shall be observed as far as may be by the Court and Judge in the case of election petitions under this Act.*

Practice of House of Commons to be observed.

27. The duties to be performed by the prescribed officer under this Act shall be performed by such one or more of the masters of the Court of Common Pleas at Westminster as may be determined by the Chief Justice of the said Court of Common Pleas, and by the master of the Court of Common Pleas at Dublin, and there shall be awarded to such masters respectively, in addition to their existing salaries, such remuneration for the performance of the duties imposed on them in pursuance of this Act as the Chief Justices of the said Courts of Common Pleas at Westminster and Dublin may respectively, with the consent of the Commissioners of the Treasury, determine.

Performance of duties by prescribed officer.

Reception, Expenses and Jurisdiction of Judge.

28. The Judge shall be received at the place where he is about to try an election petition under this Act with the same state, so far as circumstances admit, as a Judge of assize is received at an assize town; he shall be received by the sheriff in the case of a petition relating to a county election, and in any other case by the mayor, in the case of a borough having a mayor, and in the case of a borough not having a mayor by the sheriff of the county in which the borough is situate, or by some person named by such sheriff.

Reception of Judge.

The travelling and other expenses of the Judge, and all expenses properly incurred by the sheriff, or by such mayor or person named as aforesaid, in receiving the Judge and providing him with necessary accommodation and with a proper Court, shall be defrayed by the Commissioners of the Treasury out of money to be provided by Parliament.

29. On the trial of an election petition under this Act the Judge shall, subject to the provisions of this Act, have the same powers, jurisdiction and authority as a Judge of one of the Superior Courts and as a Judge of Assize and Nisi Prius, and the Court held by him shall be a Court of Record.

Power of Judge.

30. The Judge shall be attended on the trial of an election

Attendance on Judge.

* This section and s. 2 give no power to administer interrogatories to the respondent (*Wells v. Wren*, 5 C. P. D. 546).

petition under this Act in the same manner as if he were a Judge sitting at Nisi Prius, and the expenses of such attendance shall be deemed to be part of the expenses of providing a Court.

Witnesses.

Summons of witnesses.

31. Witnesses shall be subpoenaed and sworn in the same manner as nearly as circumstances admit as in a trial at Nisi Prius, and shall be subject to the same penalties for perjury.

Judge may summon and examine witnesses.

32. On the trial of an election petition under this Act, the Judge may, by Order under his hand, compel the attendance of any person, as a witness, who appears to him to have been concerned in the election to which the petition refers, and any person refusing to obey such Order shall be guilty of contempt of Court. The Judge may examine any witness so compelled to attend, or any person in Court, although such witness is not called and examined by any party to the petition. After the examination of a witness as aforesaid by a Judge, such witness may be cross-examined by or on behalf of the petitioner and respondent or either of them.

Expenses of witnesses.

33. *Repealed by C. P. Act, 1883.*

34. The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition under this Act, according to the scale allowed to witnesses on the trial of civil actions at the assizes, may be allowed to such person by a certificate under the hand of the Judge or of the prescribed officer, and such expenses, if the witness was called and examined by the Judge, shall be deemed part of the expenses of providing a Court, and in other cases shall be deemed to be costs of the petition.

Withdrawal and Abatement of Election Petitions.

Withdrawal of petition and substitution of new petitioners.

35. An election petition under this Act shall not be withdrawn without the leave of the Court or Judge upon special application to be made in and at the prescribed manner, time and place.

No such application shall be made for the withdrawal of a petition until the prescribed notice has been given in the county or borough to which the petition relates, of the intention of the petitioner to make an application for the withdrawal of his petition.

On the hearing of the application for withdrawal, any person who might have been a petitioner in respect of the election to which the petition relates may apply to the Court or Judge to be substituted as a petitioner for the petitioner so desirous of withdrawing the petition.

The Court or Judge may, if it or he think fit, substitute as a petitioner any such applicant as aforesaid; and may further if the proposed withdrawal is, in the opinion of the Court or Judge, induced by any corrupt bargain or consideration, by Order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in such security the original petitioner shall be liable to pay the costs of the substituted petitioner.

If no such Order is made with respect to the security given on behalf of the original petitioner, security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition, and within the prescribed time after the Order of substitution.

Subject as aforesaid, a substituted petitioner shall stand in the same position as nearly as may be, and be subject to the same liabilities as the original petitioner.

If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent.

Where there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners.

36. *Repealed by C. P. Act, 1883.*

37. An election petition under this Act shall be abated by the death of a sole petitioner, or of the survivor of several petitioners. Abatement of petition.

The abatement of a petition shall not affect the liability of the petitioner to the payment of costs previously incurred.

On the abatement of a petition, the prescribed notice of such abatement having taken place shall be given in the county or borough to which the petition relates, and within the prescribed time after the notice is given, any person who might have been a petitioner in respect of the election to which the petition relates may apply to the Court or Judge, in and at the prescribed manner, time and place, to be substituted a petitioner.

The Court or Judge may, if it or he think fit, substitute as a petitioner any such applicant who is desirous of being substituted, and on whose behalf security to the same amount is given as is required in the case of a new petition.

38. If before the trial of any election petition under this Act any of the following events happen in the case of the respondent; (that is to say,) Admission in certain cases of voters to be respondents.

- (1.) If he dies :
- (2.) If he is summoned to Parliament as a peer of Great Britain by a writ issued under the great seal of Great Britain :
- (3.) If the House of Commons has resolved that his seat is vacant :
- (4.) If he gives in and at the prescribed manner and time notice to the Court that he does not intend to oppose the petition :

Notice of such event having taken place shall be given in the county or borough to which the petition relates, and within the prescribed time after the notice is given any person who might have been a petitioner in respect of the election to which the petition relates may apply to the Court or Judge to be admitted as a respondent to oppose the petition, and such person shall on such application be admitted accordingly, either with the respondent, if there be a respondent, or in the place of the respondent; and any number of persons not exceeding three may be so admitted.

Respondent not opposing not to appear as party or to sit.

39. A respondent who has given the prescribed notice that he does not intend to oppose the petition shall not be allowed to appear or act as a party against such petition in any proceedings thereon, and shall not sit or vote in the House of Commons until the House of Commons has been informed of the report on the petition, and the Court or Judge shall in all cases in which such notice has been given in the prescribed time and manner report the same to the Speaker of the House of Commons.

Provisions for cases of double return where the member complained of declines to defend his return.

40. Where an election petition under this Act complains of a double return, and the respondent has given notice to the prescribed officer that it is not his intention to oppose the petition, and no party has been admitted in pursuance of this Act to defend such return, then the petitioner, if there be no petition complaining of the other member returned on such double return, may withdraw his petition by notice addressed to the prescribed officer, and upon the receipt of such notice, the prescribed officer shall report the fact of the withdrawal of such petition to the Speaker, and the House of Commons shall thereupon give the necessary directions for amending the said double return, by taking off the file the indenture by which the respondent so declining to oppose the petition was returned, or otherwise as the case may require.

Costs.

41. All costs, charges and expenses of and incidental to the presentation of a petition under this Act, and to the proceedings consequent thereon, with the exception of such costs, charges and expenses as are by this Act otherwise provided for, shall be defrayed by the parties to the petition in such manner and in such proportions as the Court or Judge may determine, regard being had to the disallowance of any costs, charges or expenses which may, in the opinion of the Court or Judge, have been caused by vexatious conduct, unfounded allegations, or unfounded objections on the part either of the petitioner or the respondent, and regard being had to the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused, whether such parties are or not on the whole successful.

General costs of petition.

The costs may be taxed in the prescribed manner and such costs may be recovered in the same manner as the costs of an action at law, or in such other manner as may be prescribed.

42. If any petitioner in an election petition presented under this Act, neglect or refuse for the space of six months after demand to pay to any person summoned as a witness on his behalf, or to the respondent any sum certified to be due to him for his costs, charges, and expenses, and if such neglect or refusal be, within one year after such demand, proved to the satisfaction of the Court of elections, in every such case, every person who has entered into a recognizance relating to such petition under the provisions of this Act shall be held to have made default in his said recognizance, and the prescribed officer shall thereupon certify such recognizance to be forfeited and the same shall be dealt with in England in manner provided by the Act of the third year of the reign of King George the Fourth, chapter forty-six, and in Ireland in manner provided by "The Fines Act (Ireland), 1851."

Recognizance, when to be estreated, &c.

Punishment of Corrupt Practices.

43. *Repealed by C. P. Act, 1883.*

44. If on the trial of any election petition under this Act any candidate is proved to have personally engaged at the election to which such petition relates as a canvasser or agent for the management of the election, any person knowing that such person has within seven years previous to such engagement been found guilty of any corrupt practice by any competent legal tribunal, or been reported guilty of any corrupt practice by a Committee of the House of Commons, or by the

Penalty for employing corrupt agent.

report of the Judge upon an election petition under this Act, or by the Report of Commissioners appointed in pursuance of the Act of the Session of the fifteenth and sixteenth years of the reign of Her Majesty, chapter fifty-seven the election of such candidate shall be void.

45. *Repealed by C. P. Act, 1883.*

Miscellaneous.

Returning officer may be sued for neglecting to return any person duly elected.

48. If any returning officer wilfully delays, neglects, or refuses duly to return any person who ought to be returned to serve in Parliament for any county or borough, such person may, in case it has been determined on the hearing of an election petition under this Act that such person was entitled to have been returned, sue the officer having so wilfully delayed, neglected, or refused duly to make such return at his election in any of Her Majesty's Courts of Record at Westminster, and shall recover double the damages he has sustained by reason thereof, together with full costs of suit: provided such action be commenced within one year after the commission of the Act on which it is grounded, or within six months after the conclusion of the trial relating to such election.

Calculation of time.

49. In recording time for the purposes of this Act, Sunday, Christmas Day, Good Friday, and any day set apart for a public fast or public thanksgiving, shall be excluded.

Controverted elections to be tried under Act.

50. From and after the next dissolution of Parliament no election or return to Parliament shall be questioned except in accordance with the provisions of this Act.*

Returning officer if complained of to be respondent.

51. Where an election petition under this Act complains of the conduct of a returning officer, such returning officer shall, for all the purposes of this Act, except the admission of respondents in his place, be deemed to be a respondent.

Petition complaining of no return.

52. A petition under this Act complaining of no return may be presented to the Court, and shall be deemed to be an election petition within the meaning of this Act, and the Court may make such Order thereon as they think expedient for compelling a return to be made, or may allow such petition to be heard by the Judge in manner hereinbefore provided with respect to ordinary election petitions.

Recrimination when petition for undue return.

53. On the trial of a petition under this Act complaining of an undue return and claiming the seat for some person, the respondent may give evidence to prove that the election of

* The remainder of this section was repealed by the Statute Law Revision Act, 1875.

such person was undue in the same manner as if he had presented a petition complaining of such election.

54. From and after the next dissolution of Parliament the Acts contained in the schedule hereto are repealed so far as relates to elections and petitions to the extent therein mentioned.*

55. The additional Puisne Judges appointed under this Act to each of the Courts of Queen's Bench, the Common Pleas and the Exchequer in England, shall, as to rank, salary, pension, attendant officers, jurisdiction, and all other privileges and duties of a Judge, stand in the same position as the other Puisne Judges of the Court to which he is attached.

Provision as to payment of additional Judges and remuneration of Judges for duties to be performed under this Act.

Any Puisne Judge of the said Courts appointed in pursuance of or after the passing of this Act shall be authorised to sit, and shall, when requested by the Lord Chancellor, sit as Judge of the Court of Probate and Court of Marriage and Divorce, or of the Admiralty Court.

56. If upon a petition to the House of Commons, presented within 21 days after the return to the clerk of the Crown in Chancery in England, or to the clerk of the Crown and Hanaper in Ireland, of a Member to serve in Parliament for any borough or county, or within 14 days after the meeting of Parliament, and signed by any two or more electors of such borough or county, and alleging that corrupt practices have extensively prevailed at the then last election for such borough or county, or that there is reason to believe that corrupt practices have there so prevailed, an address be presented by both Houses of Parliament, praying that such allegation may be inquired into, the Crown may appoint Commissioners to inquire into the same, and if such Commissioners in such case be appointed, they shall inquire in the same manner and with the same powers, and subject to all the provisions of the statute of the fifteenth and sixteenth of Victoria, chapter 57.

Commissions of inquiry into corrupt practices.

57. Any person who at the time of the passing of this Act was entitled to practice as agent, according to the principles, practice and rules of the House of Commons, in cases of election petitions and matters relating to election of Members of the House of Commons, shall be entitled to practise as an attorney or agent in cases of election petitions and all matters relating to elections before the Court and Judges prescribed by this Act: Provided, that every such person so practising

Rules as to agents practising in cases of election petitions.

* The remainder of this section was repealed by the Statute Law Revision Act, 1875.

as aforesaid shall, in respect of such practice and everything relating thereto, be subject to the jurisdiction and Orders of the Court as if he were an attorney of the said Court : And Application of Act to Scotland. further, provided, that no such person shall practice as aforesaid until his name shall have been entered on a Roll to be made and kept, and which is hereby authorised to be made and kept, by the prescribed officer in the prescribed manner.

58. The provisions of this Act shall apply to Scotland, subject to the following modifications :--

- (1.) The expression "the Court" shall mean either division of the inner house of the Court of Session, and either of such divisions shall have the same powers, jurisdiction and authority with reference to an election petition in Scotland, and the proceedings thereon, which by this Act are conferred on the Court of Common Pleas at Westminster with respect to election petitions in England :
- (2.) The expression "county" shall not include a county of a city, but shall mean any county or division of a county, or any combination of counties, or of counties and portions of counties, returning a member to serve in Parliament :
- (3.) The expression "borough" shall mean any university or universities, or any city, town, burgh or district of cities, towns or burghs, returning a member or members to serve in Parliament :
- (4.) "Recognisance" shall mean a bond of caution with usual and necessary clauses :
- (5.) The trial of every election petition in Scotland shall be conducted before a Judge of the Court of Session, to be selected from a rota to be formed as hereinafter mentioned :
- (6.) The Judges of the Court of Session shall, on or before the first day of the winter session in every year, select, by a majority of votes, two of the Judges of such Court, not being Members of the House of Lords, to be placed on the rota for the trial of election petitions during the ensuing year :
- (7.) If in any Case the Judges of the said Court are equally divided in their choice of a Judge to be placed on the rota, the Lord President shall have a second or casting vote :
- (8.) Any Judge placed on the rota shall be re-eligible in the succeeding or any subsequent year :

- (9.) In the event of the death or illness of any Judge for the time being on the rota, or his inability to act for any reasonable cause, the Judges shall fill up the vacancy by placing on the rota another Judge
- (10.) The judges for the time being on the rota shall according to their seniority, respectively try the election petitions standing for trial under this Act, unless they otherwise agree among themselves, in which case the trial of each election petition shall be taken in manner provided by such agreement :
- (11.) Where it appears to the Judges on the rota, after due consideration of the list of petitions under this Act for the time being at issue, that the trial of such election petitions will be inconveniently delayed unless an additional Judge or Judges be appointed to assist the Judges on the Rota, the Judges of the Court of Session shall, on and according to the requisition of such Judges on the rota, select in manner hereinbefore provided, a Judge to try election petitions for the ensuing year ; and any Judge so selected shall during that year be deemed to be on the rota for the trial of election petitions :
- (12.) The duties to be performed by the prescribed officer under this Act with reference to election petitions in Scotland shall be performed by such one or more of the principal clerks of session as may be determined by the Lord President of the Court of Session : and there shall be awarded to such principal clerk or clerks, in addition to their existing salaries, such remuneration for the performance of the duties imposed on them in pursuance of this Act as the said Lord President may, with the consent of the Commissioners of the Treasury, determine :
- (13.) The Judge shall be received at the place where he is about to try an election petition under this Act in the same manner and by the same authorities, as far as circumstance admit, as a Judge of the Court of Justiciary is received at a circuit town, and he shall be attended by such officer or officers as shall be necessary :
- (14.) The travelling and other expenses of the Judge, and of the officer or officers in attendance upon him, and all expenses properly incurred in providing

the Judge with a proper Court, shall be defrayed by the Commissioners of the Treasury out of money to be provided by Parliament :

- (15.) On the trial of an election petition under this Act, the Judge shall, subject to the provisions of this Act, have the same powers, jurisdictions and authority as a Judge of the Court of Session presiding at the trial of a civil cause without a jury :
- (16.) *Repealed by C. P. Act, 1883.*
- (17.) Any of Her Majesty's Courts of Record at Westminster shall in Scotland mean the Court of Session in Scotland :
- (18.) In lieu of the provisions for the estreating of a recognizance under an election petition, the prescribed officer shall, when otherwise competent under the provisions of this Act, certify that the conditions contained in the bond of caution have not been fulfilled, and it shall then be competent for the party or parties interested to register the said bond, and do diligence upon it as accords of law.

Duration of Act. 59. This Act shall be in force until the expiration of three years from the passing of such Act, and to the end of the then next Session of Parliament.

Parliamentary and Municipal Elections.

35 & 36 Vic. c. 33.

*An Act to amend the Law relating to Procedure at Parliamentary and Municipal Elections.** [18th July, 1872.

WHEREAS it is expedient to amend the law relating to procedure at Parliamentary and Municipal Elections :

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords, spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows.—

PART I.

PARLIAMENTARY ELECTIONS.

Procedure at Elections.

Nomination of candidates for Parliamentary elections.

1. A candidate for election to serve in Parliament for a county or borough shall be nominated in writing. The

* The following sections have been omitted, as dealing more particularly with municipal elections—20, 23 and 29.

• writing shall be subscribed by two registered electors of such county or borough as proposer and seconder, and by eight other registered electors of the same county or borough as assenting to the nomination, and shall be delivered during the time appointed for the election to the returning officer by the candidate himself, or his proposer or seconder.

If at the expiration of one hour after the time appointed for the election no more candidates stand nominated than there are vacancies to be filled up, the returning officer shall forthwith declare the candidates who may stand nominated to be elected, and return their names to the Clerk of the Crown in Chancery; but if at the expiration of such hour more candidates stand nominated than there are vacancies to be filled up, the returning officer shall adjourn the election, and shall take a poll in the manner in this Act mentioned.

A candidate may, during the time appointed for the election, but not afterwards, withdraw from his candidature by giving a notice to that effect, signed by him, to the returning officer: Provided that the proposer of a candidate nominated in his absence out of the United Kingdom may withdraw such candidate by a written notice signed by him and delivered to the returning officer, together with a written declaration of such absence of the candidate.

If after the adjournment of an election by the returning officer, for the purpose of taking a poll, one of the candidates nominated shall die before the poll has commenced, the returning officer shall, upon being satisfied of the fact of such death, countermand notice of the poll, and all the proceedings with reference to the election shall be commenced afresh in all respects as if the writ had been received by the returning officer on the day on which proof was given to him of such death; provided that no fresh nomination shall be necessary in the case of a candidate who stood nominated at the time of the countermand of the poll.

2. In the case of a poll at an election the votes shall be given by ballot. The ballot of each voter shall consist of a paper (in this Act called a ballot paper) showing the names and description of the candidates. Each ballot paper shall have a number printed on the back, and shall have attached a counterfoil with the same number printed on the face. At the time of voting the ballot paper shall be marked on both sides with an official mark, and delivered to the voter within the polling station, and the number of such voter on the register of voters shall be marked on the counterfoil, and the voter

Poll at elections.

having secretly marked his vote on the paper, and folded it up so as to conceal his vote, shall place it in a closed box in the presence of the officer presiding at the polling at the polling station (in this Act called "the presiding officer") after having shown to him the official mark at the back.

Any ballot paper which has not on its back the official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything except the said number on the back is written or marked by which the voter can be identified, shall be void and not counted.

After the close of the poll the ballot boxes shall be sealed up, so as to prevent the introduction of additional ballot papers, and shall be taken charge of by the returning officer, and that officer shall, in the presence of such agents, if any, of the candidates as may be in attendance, open the ballot boxes, and ascertain the result of the poll by counting the votes given to each candidate, and shall forthwith declare to be elected the candidates or candidate to whom the majority of votes have been given, and return their names to the Clerk of the Crown in Chancery. The decision of the returning officer as to any question arising in respect of any ballot paper shall be final, subject to reversal on petition questioning the election or return.

Where an equality of votes is found to exist between any candidates at an election for a county or borough, and the addition of a vote would entitle any of such candidates to be declared elected, the returning officer, if a registered elector of such county or borough, may give such additional vote, but shall not in any other case be entitled to vote at an election for which he is returning officer.

Offences at Elections.

3. Every person who,—

- (1.) Forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the returning officer any nomination paper, knowing the same to be forged; or
- (2.) Forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper, or the official mark on any ballot paper; or
- (3.) Without due authority supplies any ballot paper to any person; or
- (4.) Fraudulently puts into any ballot box any paper other than the ballot paper which he is authorised by law to put in; or

Offences in respect of nomination papers, ballot papers, and ballot boxes.

- (5.) Fraudulently takes out of the polling station any ballot paper ; or
- (6.) Without due authority destroys, takes, opens, or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election ;

shall be guilty of a misdemeanour, and be liable, if he is a returning officer or an officer or clerk in attendance at a polling station, to imprisonment for any term not exceeding two years, with or without hard labour, and if he is any other person, to imprisonment for any term not exceeding six months, with or without hard labour.

Any attempt to commit any offence specified in this section shall be punishable in the manner in which the offence itself is punishable.

In any indictment or other prosecution for an offence in relation to the nomination papers, ballot boxes, ballot papers, and marking instruments at an election, the property in such papers, boxes, and instruments may be stated to be in the returning officer at such election, as well as the property in the counterfoils.

4. Every officer, clerk, and agent in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting in such station, and shall not communicate, except for some purpose authorised by law, before the poll is closed, to any person any information as to the name or number on the register of voters of any elector who has or has not applied for a ballot paper or voted at that station, or as to the official mark, and no such officer, clerk, or agent, and no person whosoever, shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at such station. Every officer, clerk, and agent in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not attempt to ascertain at such counting the number on the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper. No person shall directly or indirectly induce

Infringement of
secrecy.

any voter to display his ballot paper after he shall have marked the same, so as to make known to any person the name of the candidate for or against whom he has so marked his vote.

Every person who acts in contravention of the provisions of this section shall be liable, on summary conviction before two justices of the peace, to imprisonment for any term not exceeding six months, with or without hard labour.

Amendment of Law.

5. *First paragraph repealed by C. P. Act, 1883.*

Division of
counties and
boroughs
into polling
districts.

The local authority (as hereinafter defined) of every borough shall take into consideration the division of such borough into polling districts, and, if they think it desirable, by order, divide such borough into polling districts in such manner as they may think most convenient for taking the votes of the electors at a poll.

The local authority of every county and borough shall, on or before the first day of May one thousand eight hundred and seventy-three, send to one of Her Majesty's Principal Secretaries of State, to be laid by him before both Houses of Parliament, a copy of any order made by such authority in pursuance of this section, and a report, in such form as he may require, stating how far the provisions of this Act with respect to polling districts have been complied with in their county or borough; and if they make any order after the first day of May one thousand eight hundred and seventy-three, with respect to polling districts or polling places in their county or borough, they shall send a copy of such order to the said Secretary of State, to be laid by him before both Houses of Parliament.

The local authority of a county or borough in this section means the authority having power to divide such county or borough into polling districts under section thirty-four of the Representation of the People Act, 1867, and any enactments amending that section; and such authority shall exercise the powers thereby given to them for the purposes of this section; and the provisions of the said section as to the local authority of a borough constituted by the combination of two or more municipal boroughs shall apply to a borough constituted by the combination of a municipal borough and other places, whether municipal boroughs or not; and in the case of a borough of which a town council is not the local authority and which is not wholly situate within one petty sessional division, the justices of the peace for the county in which

such borough or the larger part thereof in area is situate, assembled at some Court of general or quarter sessions, or at some adjournment thereof, shall be the local authority thereof, and shall for this purpose have jurisdiction over the whole of such borough; and in the case of such borough and of a county, a Court of general sessions shall be assembled within twenty-one days after the passing of this Act, and any such court may be assembled and adjourned from time to time for the purpose.

No election shall be questioned by reason of any non-compliance with this section or any informality relating to polling districts or polling places, and any order made by a local authority in relation to polling districts or polling places shall apply only to lists of voters made subsequently to its date, and to registers of voters formed out of such lists, and to elections held after the time at which a register of voters so formed has come into force: Provided that where any such order is made between the first day of July and the first day of November in any year, and does not create any new division between two or more polling districts of any parish for which a separate poor rate is or can be made, such order shall apply to the register of voters which comes into force next after such order is made, and to elections held after that register so comes into force; and the clerk of the peace or town clerk, as the case may be, shall copy, print, and arrange the lists of voters for the purpose of such register in accordance with such order.

6. The returning officer at a Parliamentary election may use, free of charge, for the purpose of taking the poll at such election, any room in a school receiving a grant out of moneys provided by Parliament, and any room the expense of maintaining which is payable out of any local rate, but he shall make good any damage done to such room, and defray any expense incurred by the person or body of persons, corporate or unincorporate, having control over the same on account of its being used for the purpose of taking the poll as aforesaid.

Use of school
and public room
for poll

The use of any room in an unoccupied house for the purpose of taking the poll shall not render any person liable to be rated or to pay any rate for such house.

7. At any election for a county or borough, a person shall not be entitled to vote unless his name is on the register of voters for the time being in force for such county or borough, and every person whose name is on such register shall be entitled to demand and receive a ballot paper and to vote:

Conclusiveness
of register of
voters.

Provided that nothing in this section shall entitle any person to vote who is prohibited from voting by any statute, or by the common law of Parliament, or relieve such person from any penalties to which he may be liable for voting.

Duties of Returning and Election Officers.

General powers
and duties of
returning
officer.

8. Subject to the provisions of this Act, every returning officer shall provide such nomination papers, polling stations, ballot boxes, ballot papers, stamping instruments, copies of register of voters, and other things, appoint and pay such officers, and do such other acts and things as may be necessary for effectually conducting an election in manner provided by this Act.

All expenses properly incurred by any returning officer in carrying into effect the provisions of this Act, in the case of any Parliamentary election, shall be payable in the same manner as expenses incurred in the erection of polling booths at such election are by law payable.

Where the sheriff is returning officer for more than one county as defined for the purposes of Parliamentary elections, he may, without prejudice to any other power, by writing under his hand, appoint a fit person to be his deputy for all or any of the purposes relating to an election in any such county, and may, by himself or such deputy, exercise any powers and do any things which the returning officer is authorised or required to exercise or do in relation to such election. Every such deputy, and also any under sheriff, shall, in so far as he acts as returning officer, be deemed to be included in the term returning officer in the provisions of this Act relating to Parliamentary elections, and the enactments with which this part of this Act is to be construed as one.

Keeping of
order in station.

9. If any person misconducts himself in the polling station, or fails to obey the lawful orders of the presiding officer, he may immediately, by order of the presiding officer, be removed from the polling station by any constable in or near that station, or any other person authorised in writing by the returning officer to remove him; and the person so removed shall not, unless with the permission of the presiding officer, again be allowed to enter the polling station during the day.

Any person so removed as aforesaid, if charged with the commission in such station of any offence, may be kept in custody until he can be brought before a justice of the peace.

Provided that the powers conferred by this section shall not be exercised so as to prevent any elector who is otherwise

entitled to vote at any polling station from having an opportunity of voting at such station.

10. For the purpose of the adjournment of the poll, and of every other enactment relating to the poll, a presiding officer shall have the power by law belonging to a deputy returning officer; and any presiding officer and any clerk appointed by the returning officer to attend at a polling station shall have the power of asking the questions and administering the oath, authorised by law to be asked of and administered to voters, and any justice of the peace and any returning officer may take and receive any declaration authorised by this Act to be taken before him.

Powers of
presiding
officer and
administration
of oaths, &c.

11. Every returning officer, presiding officer, and clerk who is guilty of any wilful misfeasance or any wilful act or omission in contravention of this Act shall, in addition to any other penalty or liability to which he may be subject, forfeit to any person aggrieved by such misfeasance, act, or omission a penal sum not exceeding one hundred pounds.

Liability of
officers for
misconduct.

Section 50 of the Representation of the People Act, 1867 (which relates to the acting of any returning officer, or his partner or clerk, as agent for a candidate), shall apply to any returning officer or officer appointed by him in pursuance of this Act, and to his partner or clerk.

Miscellaneous.

12. No person who has voted at an election shall, in any legal proceeding to question the election or return, be required to state for whom he has voted.

Prohibition
of disclosure
of vote.

13. No election shall be declared invalid by reason of a non-compliance with the rules contained in the First Schedule to this Act, or any mistake in the use of the forms in the Second Schedule to this Act, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this Act, and that such non-compliance or mistake did not affect the result of the election.

Non-com-
pliance with
rules.

14. Where a Parliamentary borough and a municipal borough occupy the whole or any part of the same area, any ballot boxes or fittings for polling stations and compartments provided for such Parliamentary borough or such municipal borough may be used in any municipal or Parliamentary election in such borough free of charge, and any damage other than reasonable wear and tear caused to the same shall be paid as part of the expenses of the election at which they are so used.

Use of muni-
cipal ballot
boxes, &c., for
Parliamentary
election, and
vice versa.

Construction
of Act.

15. This part of this Act shall, so far as is consistent with the tenor thereof, be construed as one with the enactments for the time being in force relating to the representation of the people, and to the registration of persons entitled to vote at the election of members to serve in Parliament, and with any enactments otherwise relating to the subject-matter of this part of this Act, and terms used in this part of this Act shall have the same meaning as in the said enactments; and in construing the said enactments relating to an election or to the poll or taking the votes by poll, the mode of election and of taking the poll established by this Act shall for the purposes of the said enactments be deemed to be substituted for the mode of election or poll, or taking the votes by poll, referred to in the said enactments; and any person applying for a ballot paper under this Act shall be deemed "to tender his vote," or "to assume to vote," within the meaning of the said enactments; and any application for a ballot paper under this Act, or expressions relative thereto shall be equivalent to "voting" in the said enactments and any expressions relative thereto; and the term "polling booth" as used in the said enactments shall be deemed to include a polling station; and the term "proclamation" as used in the said enactments shall be deemed to include a public notice given in pursuance of this Act.

Application of Part of Act to Scotland.

Alterations for
application of
Part i. to
Scotland.

16. This part of this Act shall apply to Scotland, subject to the following provisions:—

- (1.) The expression "crime and offence" shall be equivalent to the expression "misdemeanour," and shall be substituted therefor:
- (2.) All offences under this Act for which any person may be punished on summary conviction shall be prosecuted before the sheriff under the provisions of "The Summary Procedure Act, 1864;" and all jurisdictions, powers, and authorities necessary for that purpose are hereby conferred on sheriffs:
- (3.) The expression "sheriff" shall include sheriff substitute:
- (4.) The provisions of this Act relating to the division of counties and boroughs into polling districts shall not apply to Scotland:
- (5.) The ballot boxes, ballot papers, stamping instruments, and other requisites for a Parliamentary election shall be provided and paid for in the same

manner as polling rooms or booths under the fortieth section of the Act of the second and third years of the reign of King William the Fourth, chapter sixty-five, intituled "An Act to amend the Representation of the People in Scotland;" and the reasonable remuneration of presiding officers, assistants, and clerks employed by the returning officer at such an election, and all other expenses properly incurred by the returning officer, and by sheriff clerks and town clerks, in carrying into effect the provisions of this Act, shall be paid by the candidates; provided always, that if any person shall be proposed as a candidate without his consent the person so proposing him shall be liable to defray his share of all those expenses in like manner as if he had been a candidate himself; provided also, that the fee to be paid to each presiding officer shall in no case exceed the sum of three guineas per day, and the fee to be paid to each assistant to the returning officer shall in no case exceed two guineas per day, and the fee to be paid to each clerk shall not exceed one guinea per day.

Application of Part of Act to Ireland.

17. This part of the Act shall apply to Ireland, subject to the following modifications: Alterations for application of Part I. to Ireland.

- (1.) The expression "Clerk of the Crown in Chancery" shall mean the Clerk of the Crown and Hanaper in Ireland:
- (2.) The preceding provisions of this part of this Act with respect to the division of counties and boroughs into polling districts shall not extend to Ireland:
- (3.) In the construction of the preceding provisions of this part of this Act as applying to Ireland, s. 13 of "The Representation of the People (Ireland) Act, 1868," shall be substituted for s. 50 of "The Representation of the People Act, 1867," wherever in such provisions the said last-mentioned section occurs. The provision contained in the sixth section of this Act providing for the use of school-rooms free of charge, for the purpose of taking the poll at elections, shall not apply to any school adjoining or adjacent to any church or other place

of worship, nor to any school connected with a nunnery or other religious establishment :

- (4.) No returning officer shall be entitled to claim, or be paid, any sum or sums of money for the erection of polling booths or stations and compartments other than the sum or sums actually and necessarily incurred and paid by him in reference to the same, any statute or statutes to the contrary now in force notwithstanding, nor shall the expenses of providing sufficient polling stations or booths and compartments at every polling place exceed the sum or sums now given and allowed by statute in Ireland.

Provisions as to polling districts and polling places in Ireland.

18. With respect to polling districts and polling places in Ireland, the following regulations shall have effect ; that is to say :

- (1.) The Lord Lieutenant, by and with the advice of the Privy Council in Ireland, shall appoint special sessions to be held by the chairman of quarter sessions and justices of the peace having jurisdiction in each county or riding of a county in Ireland, at such places and times before the first day of November next after the passing of this Act as shall seem fit for the purpose of dividing such county or riding into polling districts and appointing polling places for such districts :
- (2.) The clerk of the said Privy Council shall cause each such appointment to be notified to the clerk of the peace of the county to which the same relates, and shall cause notice of the same to be published twice in each of two consecutive weeks in one or more newspapers usually circulated in such county, and once in the " Dublin Gazette " :
- (3.) The Clerk of the peace of each county in Ireland shall, within five days after the receipt of such notification as aforesaid, send a written or printed notice of the same to the chairman and to every justice of the peace having jurisdiction within the county or riding to which the same relates :
- (4.) The chairman of quarter sessions and the justice of the peace having jurisdiction in any county or riding assembled at such special sessions appointed in manner aforesaid, or at any adjournment of the same before the first day of December next after

the passing of this Act, shall make an order dividing such county or riding of a county into polling districts, and appointing in each such polling district a place (in this section referred to as a "polling place") for taking the poll at contested elections of members to serve in Parliament for such county :

- (5.) Every such division shall be made in such manner so that, as far as practicable, every building or place in such county in which petty sessions are at the time of the passing of this Act held shall be a polling place: Provided always, that where it appears to the chairman and justices assembled at special sessions that, for the purpose of affording full facilities for taking the poll at contested elections, there should be polling places in addition to such buildings or places where petty sessions are held as aforesaid, they shall appoint so many polling places in addition to such buildings or places as they may think necessary, and constitute a polling district for each such polling place :
- (6.) Every such order shall specify the barony or baronies, half barony or half baronies, townland or townlands, parish or parishes, and places constituting each such polling district :
- (7.) A copy of every such order shall forthwith be sent by the clerk of the peace for such county to the clerk of the said Privy Council, who thereupon shall submit the same for confirmation by the Lord Lieutenant and Privy Council in Ireland, in the manner by this Act provided, and such order shall not be of any validity until the same has been so confirmed :
- (8.) Notice of the intended confirmation of any such order shall be given by the Clerk of the said Privy Council at least one month before the day fixed for such confirmation by the publication of such notice and order in one or more newspapers circulating within such county or riding to which the order has reference :
- (9.) It shall be lawful for the Lord Lieutenant and Privy Council, on the day fixed for the intended confirmation of any such order, to confirm the same as it stands, or with such variation, alteration, or

modification as may seem fit: Provided always, that where any person is dissatisfied with any such order it shall be lawful for such person, within fourteen days after the publication of the notice of the intended confirmation of such order, to appeal against the same, and such appeal shall be in writing, stating the grounds thereof and shall be signed by such person, and shall within such time be lodged with the clerk of the Privy Council; and it shall be lawful for the Lord Lieutenant and Privy Council, previous to the confirmation of any such order, to hear and determine such appeal against the same, and to make such order as to the costs of such appeal as may seem meet:

- 10.) When any such order has been confirmed as aforesaid, the clerk of the said Privy Council shall transmit a copy of the same to the clerk of the peace of the county to which the same relates, and shall cause the same to be published once in the "Dublin Gazette," and once in the newspaper in which the notice of intended confirmation was published.
- (11.) The provisions of the Act of the session of the twenty-seventh and twenty-eighth years of the reign of Her present Majesty, chapter twenty-two, for ascertaining the voters in the new or altered polling districts referred to in the ninth section of the said Act, and for making separate lists of voters, and otherwise in relation thereto, shall extend and apply to every case in which any order in relation to any county has been confirmed under the authority of this section, in like manner as if such sections were herein re-enacted, and the polling districts to which the same refer or apply had been polling districts constituted under the authority of this section; and the register of voters in force in such county at the time of confirming such order as amended by the printed books given into the custody of the sheriff of such county in manner by the said Act provided, and the said printed books shall be the register of persons entitled to vote at any election of a member or members to serve in Parliament, which shall take place in and for such

county until the first day of January next after the giving of the said books as aforesaid: Provided always, that in the construction of the said provisions, the terms "the passing of this Act" and the "said Act" shall respectively be construed to mean the confirming of any order made under the authority of this section and this Act:

- (12.) At any election of a member or members to serve in Parliament for any county for which any such order relates held after the confirming of any such order, and before the register of voters to be formed subsequently to the date of the confirming of such order under the provisions of this section shall be in force, the poll shall be taken as if no such order had been made:
- (13.) All precepts, notices and forms relating to the registration of voters shall be framed and expressed in such manner and form as may be necessary for the carrying the provisions of this Act into effect:
- (14.) When the chairman of quarter sessions and justices of the peace having jurisdiction in any county or riding are of opinion that for the purpose of affording further facilities for polling at contested elections there should be within such district polling places in addition to the places appointed in manner aforesaid, they may by resolution determine that at the next general or quarter sessions in such division of such county the necessity for such additional polling places shall be considered by the chairman and justices assembled at the same:
- (15.) The clerk of the peace of such county shall, within five days after the making of such resolution, send a written or printed copy of the same to the chairman and to every justice of the peace having jurisdiction within the county to which the same relates, and shall cause a copy of such resolution to be published twice in each of two consecutive weeks in some newspaper circulated in such county:
- (16.) The said chairman and justices assembled at such general or quarter sessions holden next after the making of such resolution shall consider whether additional polling places are necessary, and if they are of such opinion, they may, by an order to be made in like manner and subject to the same pro-

visions as to the making, confirming, and taking effect of the same as are in this section contained in relation to orders to be made at special sessions under the authority of the same, appoint such other places to be polling places as they shall think fit, and shall constitute polling districts for such polling places :

- (17.) No election shall be questioned by reason of any polling district not having been constituted in conformity with the provisions of this Act, or by reason of any informality relative to any polling district :
- (18.) When any day fixed for taking the poll at any election is the day fixed for the holding of the petty sessions Court at any polling place, the Court shall stand *ipso facto* adjourned till the next day, which shall in that case be the legal day for holding said Court, and if that day be a Sunday or legal holiday, till the next day :
- (19.) The term "the Lord Lieutenant" in this section shall mean the Lord Lieutenant of Ireland and the lords justices or other chief governors or governor of Ireland for the time being, and the term "chairman of quarter sessions" in this section shall include any person duly appointed to do the duty of such chairman during his sickness or absence.

Amendment of
law as to voting
in wards in
certain
boroughs.

19. Where the name of any person is required to be inserted in any list of voters for any ward of any city, town, or borough under the provisions of section seven of the Act passed in the session of Parliament held in the thirteenth and fourteenth years of the reign of Her present Majesty, chapter sixty-eight, as qualified in respect of any property qualification, or as the occupier of any lands, tenements, or hereditaments situate in whole or in part beyond the limits of such ward, then and in every such case the names so required to be inserted shall be placed in alphabetical order in a separate part of such list to be styled "the list of rural or out voters of such ward," and the property, lands, tenements, and hereditaments in respect of which such person is qualified as aforesaid shall for the purposes of the said Act and Acts amending the same, in relation to the providing of booths and compartments within each ward of any city, town, or borough, and the voting therein of persons entitled to vote in respect of any such qualifications aforesaid, be deemed to constitute a separate

ward: Provided always that the name of any such person shall not be placed in such separate list if such person shall, in writing under his hand, object thereto, and if such objection is delivered to such clerk of the peace on or before the twenty-fifth day of August next preceding the making of such list under the provisions aforesaid, and in such case in relation to such person the provisions of this section shall not apply.

PART III.

PERSONATION.

24. The following enactments shall be made with respect to personation at Parliamentary and Municipal Elections: Definition and punishment of personation.

A person shall for all purposes of the laws relating to Parliamentary and municipal elections be deemed to be guilty of the offence of personation who at an election for a county or borough, or at a municipal election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who having voted once at any such election applies at the same election for a ballot paper in his own name.

It shall be the duty of the returning officer to institute a prosecution against any person whom he may believe to have been guilty of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, at the election for which he is returning officer, and the costs and expenses of the prosecutor and the witnesses in such case, together with compensation for their trouble and loss of time, shall be allowed by the Court in the same manner in which Courts are empowered to allow the same in cases of felony.

The provisions of the Registration Acts, specified in the Third Schedule to this Act, shall in England and Ireland respectively apply to personation under this Act in the same manner as they apply to a person who knowingly personates and falsely assumes to vote in the name of another person as mentioned in the said Acts.

25. Where a candidate, on the trial of an election petition claiming the seat for any person, is proved to have been guilty, by himself or by any person on his behalf, of bribery, treating, or undue influence in respect of any person who voted at such election, or where any person retained or employed for reward by or on behalf of such candidate for all or any of the purposes of such election, as agent, clerk, messenger, or in any other employment, is proved on such trial to have voted at Vote to be struck off for bribery, treating, or undue influence.

such election, there shall, on a scrutiny, be struck off from the number of votes appearing to have been given to such candidate, one vote for every person who voted at such election, and is proved to have been so bribed, treated, or unduly influenced, or so retained or employed for reward as aforesaid.

Alterations in
Act as applying
to Scotland.

26. This part of this Act shall apply to Scotland, subject to the following provision :—

The offence of personation shall be deemed to be a crime and offence, and the rules of the law of Scotland with respect to apprehension, detention, precognition, commitment, and bail shall apply thereto, and any person accused thereof may be brought to trial in the Court of Justiciary, whether in Edinburgh or on circuit, at the instance of the Lord Advocate, or before the Sheriff Court at the instance of the procurator fiscal.

Construction of
part of Act.

27. This part of this Act, so far as regards Parliamentary elections, shall be construed as one with "The Parliamentary Elections Act, 1868," and shall apply to an election for a university or combination of universities.

PART IV.

MISCELLANEOUS.

Effect of
schedules.

28. The schedules to this Act, and the notes thereto, and directions therein, shall be construed and have effect as part of this Act.

30. This Act shall apply to any Parliamentary or municipal election which may be held after the passing thereof.

31. Nothing in this Act, except Part iii. thereof, shall apply to any election for a university or combination of universities.

Repeal.

Short title.

32. *Repeal of Act in Schedules.*

33. This Act may be cited as "The Ballot Act, 1872," and shall continue in force till the thirty-first day of December, one thousand eight hundred and eighty, and no longer, unless Parliament shall otherwise determine; and on the said day the Acts in the fourth, fifth and sixth schedules shall be thereupon revived; provided that such revival shall not affect any act done, any rights acquired, any liability or penalty incurred, or any proceeding pending under this Act, but such proceeding shall be carried on as if this Act had continued in force.*

* This Act was continued by "The Expiring Laws Continuance Act, 1883."

SCHEDULES.

FIRST SCHEDULE.

PART I.

RULES FOR PARLIAMENTARY ELECTIONS.

Election.

1. The returning officer shall, in the case of a county election, within two days after the day on which he receives the writ, and in the case of a borough election, on the day on which he receives the writ, or the following day, give public notice, between the hours of nine in the morning and four in the afternoon, of the day on which, and the place at which he will proceed to an election, and of the time appointed for the election, and of the day on which the poll will be taken in case the election is contested, and of the time and place at which forms of nomination papers may be obtained, and in the case of a county election, shall send one of such notices by post under cover, to the postmaster of the principal post office of each polling place in the county, endorsed with the words "Notice of election," and the same shall be forwarded free of charge; and the postmaster receiving the same shall forthwith publish the same in the manner in which post office notices are usually published. Sched. 1.
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Notices.

2. The day of election shall be fixed by the returning officer as follows: that is to say, in the case of an election for a county or a district borough, not later than the ninth day after the day on which he receives the writ, with an interval of not less than three clear days between the day on which he gives the notice and the day of election; and in the case of an election for any borough other than a district borough, not later than the fourth day after the day on which he receives the writ, with an interval of not less than two clear days between the day on which he gives the notice and the day of election.

3. The place of election shall be a convenient room situate in the town in which such election would have been held if this Act had not passed, or where the election would not have been held in a town, then situate in such town in the county

Sched. 1. as the returning officer may from time to time determine as being in his opinion most convenient for the electors.

4. The time appointed for the election shall be such two hours between the hours of ten in the forenoon and three in the afternoon as may be appointed by the returning officer, and the returning officer shall attend during those two hours and for one hour after.

5. Each candidate shall be nominated by a separate nomination paper, but the same electors or any of them may subscribe as many nomination papers as there are vacancies to be filled, but no more.

6. Each candidate shall be described in the nomination paper in such manner as in the opinion of the returning officer is calculated to sufficiently identify such candidate; the description shall include his names, his abode, and his rank, profession, or calling, and his surname shall come first in the list of his names. No objection to a nomination paper on the ground of the description of the candidate therein being insufficient, or not being in compliance with this rule, shall be allowed or deemed valid, unless such objection is made by the returning officer, or by some other person, at or immediately after the time of the delivery of the nomination paper.

7. The returning officer shall supply a form of nomination paper to any registered elector requiring the same during such two hours as the returning officer may fix, between the hours of ten in the morning and two in the afternoon on each day intervening between the day on which notice of the election was given and the day of election, and during the time appointed for the election; but nothing in this Act shall render obligatory the use of a nomination paper supplied by the returning officer, so, however, that the paper be in the form prescribed by this Act.

8. The nomination papers shall be delivered to the returning officer at the place of election during the time appointed for the election; and the candidate nominated by each nomination paper, and his proposer and seconder, and one other person selected by the candidate, and no person other than aforesaid, shall, except for the purpose of assisting the returning officer, be entitled to attend the proceedings during the time appointed for the election.

9. If the election is contested the returning officer shall, as soon as practicable after adjourning the election, give public notice of the day on which the poll will be taken, and of the candidates described as in their respective nomination papers,

and of the names of the persons who subscribed the nomination paper of each candidate, and of the order in which the names of the candidates will be printed in the ballot paper, and, in the case of an election for a county, deliver to the postmaster of the principal post-office of the town in which is situate the place of election a paper, signed by himself, containing the names of the candidates nominated, and stating the day on which the poll is to be taken, and the postmaster shall forward the information contained in such paper by telegraph, free of charge, to the several postal telegraph offices situate in the county for which the election is to be held, and such information shall be published forthwith at each such office in the manner in which post-office notices are usually published.

10. If any candidate nominated during the time appointed for the election is withdrawn in pursuance of this Act, the returning officer shall give public notice of the name of such candidate, and the names of the persons who subscribed the nomination paper of such candidate, as well as of the candidates who stood nominated or were elected.

11. The returning officer shall, on the nomination paper being delivered to him, forthwith publish notice of the name of the person nominated as a candidate, and of the names of his proposer and seconder, by placarding or causing to be placarded the names of the candidate and his proposer and seconder in a conspicuous position outside the building in which the room is situate appointed for the election.

12. A person shall not be entitled to have his name inserted in any ballot paper as a candidate unless he has been nominated in manner provided by this Act, and every person whose nomination paper has been delivered to the returning officer during the time appointed for the election shall be deemed to have been nominated in manner provided by this Act, unless objection be made to his nomination paper by the returning officer or some other person before the expiration of the time appointed for the election or within one hour afterwards.

13. The returning officer shall decide on the validity of every objection made to a nomination paper, and his decision, if disallowing the objection, shall be final; but if allowing the same, shall be subject to reversal on petition questioning the election or return.

The Poll.

14. The poll shall take place on such day as the returning officer may appoint, not being in the case of an election for a county or a district borough less than two nor more than six

Sched. 1. clear days, and not being in the case of an election for a borough other than a district borough more than three clear days after the day fixed for the election.

15. At every polling place the returning officer shall provide a sufficient number of polling stations for the accommodation of the electors entitled to vote at such polling place, and shall distribute the polling stations amongst those electors in such manner as he thinks most convenient, provided that in a district borough there shall be at least one polling station at each contributory place of such borough.

16. Each polling station shall be furnished with such number of compartments, in which the voters can mark their votes screened from observation, as the returning officer thinks necessary, so that at least one compartment be provided for every one hundred and fifty electors entitled to vote at such polling station.

17. A separate room or separate booth may contain a separate polling station, or several polling stations may be constructed in the same room or booth.

18. No person shall be admitted to vote at any polling station except the one allotted to him.

19. The returning officer shall give public notice of the situation of polling stations, and the description of voters entitled to vote at each station, and of the mode in which electors are to vote.

20. The returning officer shall provide each polling station with materials for voters to mark the ballot papers, with instruments for stamping thereon the official mark, and with copies of the register of voters, or such part thereof that contains the names of the voters allotted to vote at such station. He shall keep the official mark secret, and an interval of not less than seven years shall intervene between the use of the said official mark at elections for the same county or borough.

21. The returning officer shall appoint a presiding officer to preside at each station, and the officer so appointed shall keep order at his station, shall regulate the number of electors to be admitted at a time, and shall exclude all other persons except the clerks, the agents of the candidates, and the constables on duty.

22. Every ballot paper shall contain a list of the candidates described as in their respective nomination papers, and arranged alphabetically in the order of their surnames, and (if there are two or more candidates with the same surname) of

their other names: it shall be in the form set forth in the Second Schedule to this Act or as near thereto as circumstances permit, and shall be capable of being folded up.

Sched. 1.
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23. Every ballot box shall be so constructed that the ballot papers can be introduced therein, but cannot be withdrawn therefrom, without the box being unlocked. The presiding officer at any polling station, just before the commencement of the poll, shall show the ballot box empty to such persons, if any, as may be present in such station, so that they may see that it is empty, and shall then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking such seal, and shall place it in his view for the receipt of ballot papers, and keep it so locked and sealed.

24. Immediately before a ballot paper is delivered to an elector it shall be marked on both sides with the official mark, either stamped or perforated, and the number, name and description of the elector as stated in the copy of the register shall be called out, and the number of such elector shall be marked on the counterfoil, and a mark shall be placed in the register against the number of the elector, to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received.

25. The elector, on receiving the ballot paper, shall forthwith proceed into one of the compartments in the polling station, and there mark his paper, and fold it up so as to conceal his vote, and shall then put his ballot paper, so folded up, into the ballot box; he shall vote without undue delay, and shall quit the polling station as soon as he has put his ballot paper into the ballot box.

26. The presiding officer, on the application of any voter who is incapacitated by blindness or other physical cause from voting in manner prescribed in this Act, or (if the poll be taken on Saturday) of any voter who declares that he is of the Jewish persuasion, and objects on religious grounds to vote in manner prescribed by this Act, or of any voter who makes such a declaration as hereinafter mentioned that he is unable to read, shall, in the presence of the agents of the candidates, cause the vote of such voter to be marked on a ballot paper in manner directed by such voter, and the ballot paper to be placed in the ballot box, and the name and number on the register of voters, of every voter whose vote is marked in pursuance of this rule, and the reason why it is so marked, shall be entered on a list, in this Act called "the list of voters marked by the presiding officer."

Sched. I.
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The said declaration, in this Act referred to as "the declaration of inability to read," shall be made by the voter at the time of polling, before the presiding officer, who shall attest it in the form hereinafter mentioned, and no fee, stamp, or other payment shall be charged in respect of such declaration, and the said declaration shall be given to the presiding officer at the time of voting.

27. If a person, representing himself to be a particular elector named on the register, applies for a ballot paper after another person has voted as such elector, the applicant shall, upon duly answering the questions and taking the oath permitted by law to be asked of and to be administered to voters at the time of polling, be entitled to mark a ballot paper in the same manner as any other voter, but the ballot paper (in this Act called a tendered ballot paper) shall be of a colour differing from the other ballot papers, and instead of being put into the ballot box, shall be given to the presiding officer and endorsed by him with the name of the voter and his number in the register of voters, and set aside in a separate packet, and shall not be counted by the returning officer. And the name of the voter and his number on the register shall be entered on a list, in this Act called the tendered votes list.

28. A voter who has inadvertently dealt with this ballot paper in such manner that it cannot be conveniently used as a ballot paper, may, on delivering to the presiding officer the ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the presiding officer, obtain another ballot paper in the place of the ballot paper so delivered up (in this Act called a spoilt ballot paper), and the spoilt ballot paper shall be immediately cancelled.

29. The presiding officer of each station, as soon as practicable after the close of the poll, shall, in the presence of the agents of the candidates, make up into separate packets sealed with his own seal and the seals of such agents of the candidates as desire to affix their seals—

- (1.) Each ballot box in use at his station, unopened but with the key attached; and
- (2.) The unused and spoilt ballot papers, placed together and
- (3.) The tendered ballot papers; and
- (4.) The marked copies of the register of voters, and the counterfoils of the ballot papers; and
- (5.) The tendered votes list, and the list of votes marked by the presiding officer, and a statement of the

number of the voters whose votes are so marked by the presiding officer under the heads "physical incapacity," "Jews," and "unable to read," and the declarations of inability to read; and shall deliver such packets to the returning officer.

Sched. 1.
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30. The packets shall be accompanied by a statement made by such presiding officer, showing the number of ballot papers entrusted to him, and accounting for them under the heads of ballot papers in the ballot box, unused, spoilt, and tendered ballot papers, which statement is in this Act referred to as the ballot paper account.

Counting Votes.

31. The candidates may respectively appoint agents to attend the counting of the votes.

32. The returning officer shall make arrangements for counting the votes in the presence of the agents of the candidates as soon as practicable after the close of the poll, and shall give to the agents of the candidates appointed to attend at the counting of the votes notice in writing of the time and place at which he will begin to count the same.

33. The returning officer, his assistants and clerks, and the agents of the candidates, and no other person, except with the sanction of the returning officer, may be present at the counting of the votes.

34. Before the returning officer proceeds to count the votes he shall, in the presence of the agents of the candidates, open each ballot box, and taking out the papers therein, shall count and record the number thereof, and then mix together the whole of the ballot papers contained in the ballot boxes. The returning officer, while counting and recording the number of ballot papers and counting the votes, shall keep the ballot papers with their faces upwards, and take all proper precautions for preventing any person from seeing the numbers printed on the backs of such papers.

35. The returning officer shall, so far as practicable, proceed continuously with counting the votes, allowing only time for refreshment, and excluding (except so far as he and the agents otherwise agree) the hours between seven o'clock at night and nine o'clock on the succeeding morning. During the excluded time the returning officer shall place the ballot papers and other documents relating to the election under his own seal and the seals of such of the agents of the candidates

Sched. 1. as desire to affix their seals, and shall otherwise take proper precautions for the security of such papers and documents.

36. The returning officer shall endorse "rejected" on any ballot paper which he may reject as invalid, and shall add to the endorsement "rejection objected to," if an objection be in fact made by any agent to his decision. The returning officer shall report to the Clerk of the Crown in Chancery the numbers of ballot papers rejected and not counted by him under the several heads of—

1. Want of official mark;
2. Voting for more candidates than entitled to;
3. Writing or mark by which voter could be identified;
4. Unmarked or void for uncertainty;

and shall on request allow any agents of the candidates, before such report is sent, to copy it.

37. Upon the completion of the counting, the returning officer shall seal up in separate packets the counted and rejected ballot papers. He shall not open the sealed packet of tendered ballot papers or marked copy of the register of voters and counterfoils, but shall proceed, in the presence of the agents of the candidates, to verify the ballot paper account given by each presiding officer by comparing it with the number of ballot papers recorded by him as aforesaid, and the unused and spoilt ballot papers in his possession and the tendered votes list, and shall reseal each sealed packet after examination. The returning officer shall report to the Clerk of the Crown in Chancery the result of such verification, and shall, on request, allow any agents of the candidates, before such report is sent, to copy it.

38. Lastly, the returning officer shall forward to the Clerk of the Crown in Chancery (in manner in which the poll books are by any existing enactment required to be forwarded to such clerk, or as near thereto as circumstances admit) all the packets of ballot papers in his possession, together with the said reports, the ballot paper accounts, tendered votes lists, lists of votes marked by the presiding officer, statements relating thereto, declarations of inability to read, and packets of counterfoils, and marked copies of registers, sent by each presiding officer, endorsing on each packet a description of its contents and the date of the election to which they relate, and the name of the county or borough for which such election was held; and the term poll book in any such enactment shall be construed to include any document forwarded in pursuance of this rule.

39. The Clerk of the Crown shall retain for a year all documents relating to an election forwarded to him in pursuance of this Act by a returning officer, and then, unless otherwise directed by an order of the House of Commons, or of one of Her Majesty's Superior Courts, shall cause them to be destroyed.

40. No person shall be allowed to inspect any rejected ballot papers in the custody of the Clerk of the Crown in Chancery, except under the order of the House of Commons, or under the order of one of Her Majesty's Superior Courts, to be granted by such Court on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition questioning an election or return; and any such order for the inspection or production of ballot papers may be made subject to such conditions as to persons, time, place and mode of inspection or production as the House or Court making the same may think expedient, and shall be obeyed by the Clerk of the Crown in Chancery. Any power given to a Court by this rule may be exercised by any Judge of such Court at chambers.

41. No person shall, except by order of the House of Commons or any tribunal having cognizance of petitions complaining of undue returns or undue elections, open the sealed packets of counterfoils after the same has been once sealed up, or be allowed to inspect any counted ballot papers in the custody of the Clerk of the Crown in Chancery; such order may be made subject to such conditions as to persons, time, place and mode of opening or inspection as the House or tribunal making the order may think expedient; provided that on making and carrying into effect any such order, care shall be taken that the mode in which any particular elector has voted shall not be discovered until he has been proved to have voted, and his vote has been declared by a competent Court to be invalid.

42. All documents forwarded by a returning officer in pursuance of this Act to the Clerk of the Crown in Chancery, other than ballot papers and counterfoils, shall be open to public inspection at such time and under such regulations as may be prescribed by the Clerk of the Crown in Chancery, with the consent of the Speaker of the House of Commons, and the Clerk of the Crown shall supply copies of or extracts from the said documents to any person demanding the same,

Sched. 1. on payment of such fees and subject to such regulations as may be sanctioned by the Treasury.

43. Where an order is made for the production by the Clerk of the Crown in Chancery of any document in his possession relating to any specified election, the production by such clerk or his agent of the document ordered, in such manner as may be directed by such order, or by a rule of the Court having power to make such order, shall be conclusive evidence that such document relates to the specified election; and any endorsement appearing on any packet of ballot papers produced by such Clerk of the Crown, or his agent, shall be evidence of such papers being what they are stated to be by the endorsement. The production from proper custody of a ballot paper purporting to have been used at any election, and of a counterfoil marked with the same printed number and having a number marked thereon in writing, shall be *prima facie* evidence that the person who voted by such ballot paper was the person who, at the time of such election, had affixed to his name in the register of voters at such election the same number as the number written on such counterfoil.

General Provisions.

44. The return of a member or members elected to serve in Parliament for any county or borough shall be made by a certificate of the names of such member or members, under the hand of the returning officer, endorsed on the writ of election for such county or borough, and such certificate shall have effect and be dealt with in like manner as the return under the existing law, and the returning officer may, if he think fit, deliver the writ with such certificate endorsed, to the postmaster of the principal post-office of the place of election, or his deputy, and in that case he shall take a receipt from the postmaster or his deputy for the same; and such postmaster or his deputy shall then forward the same by the first post, free of charge, under cover, to the Clerk of the Crown, with the words "Election Writ and Return" endorsed thereon.

45. The returning officer shall, as soon as possible, give public notice of the names of the candidates elected, and in the case of a contested election, of the total number of votes given for each candidate, whether elected or not.

46. Where the returning officer is required or authorised by this Act to give any public notice, he shall carry such requirement into effect by advertisements, placards, handbills,

or such other means as he thinks best calculated to afford information to the electors.

Sched. 1.
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47. The returning officer may, if he think fit, preside at any polling station, and the provisions of this Act relating to a presiding officer shall apply to such returning officer with the necessary modifications as to things to be done by the returning officer to the presiding officer, or the presiding officer to the returning officer.

48. In the case of a contested election for any county or borough, the returning officer may, in addition to any clerks, appoint competent persons to assist him in counting the votes.

49. No person shall be appointed by a returning officer for the purposes of an election who has been employed by any other person in or about the election.

50. The presiding officer may do, by the clerks appointed to assist him, any act which he is required or authorised to do by this Act at a polling station, except ordering the arrest, exclusion, or ejection from the polling station of any person.

51. A candidate may himself undertake the duties which any agent of his if appointed might have undertaken, or may assist his agent in the performance of such duties, and may be present at any place at which his agent may, in pursuance of this Act, attend.

52. The name and address of every agent of a candidate appointed to attend the counting of the votes shall be transmitted to the returning officer one clear day at the least before the opening of the poll; and the returning officer may refuse to admit to the place where the votes are counted any agent whose name and address has not been so transmitted, notwithstanding that his appointment may be otherwise valid, and any notice required to be given to an agent by the returning officer may be delivered at or sent by post to such address.

53. If any person appointed an agent by a candidate for the purposes of attending at the polling station or at the counting of the votes dies, or becomes incapable of acting during the time of the election, the candidate may appoint another agent in his place, and shall forthwith give to the returning officer notice in writing of the name and address of the agent so appointed.

54. Every returning officer, and every officer, clerk, or agent authorised to attend at a polling station, or at the

Sched. 1. — counting of the votes, shall, before the opening of the poll, make a statutory declaration of secrecy, in the presence, if he is the returning officer, of a justice of the peace, and if he is any other officer or an agent, of a justice of the peace or of the returning officer; but no such returning officer, officer, clerk, or agent as aforesaid shall, save as aforesaid, be required, as such, to make any declaration or take any oath on the occasion of any election.

55. Where in this Act any expressions are used requiring or authorising or inferring that any act or thing is to be done in the presence of the agents of the candidates, such expressions shall be deemed to refer to the presence of such agents of the candidates as may be authorised to attend, and as have in fact attended, at the time and place where such act or thing is being done, and the non-attendance of any agents or agent at such time and place shall not, if such act or thing be otherwise duly done, in anywise invalidate the act or thing done.

56. In reckoning time for the purposes of this Act, Sunday, Christmas-day, Good Friday, and any day set apart for a public fast or public thanksgiving, shall be excluded; and where anything is required by this Act to be done on any day which falls on the above-mentioned days such thing may be done on the next day, unless it is one of the days excluded as above mentioned.

57. In this Act—

The expression “district borough” means the borough of Monmouth and any of the boroughs specified in Schedule E. to the Act of the Session of the second and third years of the reign of King William the Fourth, chapter forty-five, intituled “An Act to amend the Representation of the People in England and Wales”; and

The expression “polling place” means, in the case of a borough, such borough or any part thereof in which a separate booth is required or authorised by law to be provided; and

The expression “agents of the candidates,” used in relation to a polling station, means agents appointed in pursuance of section eighty-five of the Act of the session of the sixth and seventh years of the reign of Her present Majesty, chapter eighteen.

*Modifications in Application of Part I. of Schedule to Scotland.*Sched. 1.
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58. In Scotland, the place of election shall be a convenient room situate in the town in which the writ for the election would, if this Act had not passed, have been proclaimed.

59. In Scotland, the candidates may respectively appoint agents to attend at the polling stations. The ballot papers and other documents, other than the return required to be sent to and kept by the Clerk of the Crown in Chancery, shall, in Scotland, be kept by the sheriff clerks of the respective counties in which the returns (including those for burghs) are made, and the provisions of this schedule relating thereto shall be construed as if the sheriff clerk were substituted for Clerk of the Crown in Chancery.

60. In Scotland, the term "district borough" shall mean the combined burghs and towns specified in Schedule E of the Act of the session of the second and third years of the reign of King William the Fourth, chapter sixty-five, intituled "An Act to amend the Representation of the People in Scotland;" and in Schedule A of the Representation of the People (Scotland) Act, 1868.

61. The provisions of the Act of the session of the second and third years of the reign of King William the Fourth, chapter sixty-five, intituled "An Act to amend the Representation of the People in Scotland," in so far as they relate to the fixing and announcement of the day of election, the interval to elapse between the receipt of the writ and the day of election, the period of adjournment for taking the poll in the case of Orkney and Shetland, and of the district of burghs, comprising Kirkwall, Wick, Dornoch, Dingwall, Tain, and Cromarty, and to the keeping open of the poll for two consecutive days in the case of Orkney and Shetland, shall remain in full force and effect, anything in this Act or any other Act of Parliament now in force notwithstanding; but nothing herein contained shall be construed to exclude Orkney and Shetland, or Orkney or Shetland, or the said district of burghs, or any of the burghs in the said district, from any of the benefits and obligations of the other portions of this Act.

Modifications in Application of Part I. of Schedule to Ireland.

62. The expression "Clerk of the Crown in Chancery," in this schedule, shall mean, as regards Ireland, "the Clerk of the Crown and Hanaper in Ireland."

63. A presiding officer at a polling station in a county in Ireland need not be a freeholder of the county.

SECOND SCHEDULE.

Sched. 2.

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Note.—The forms contained in this schedule, or forms as nearly resembling the same as circumstances will admit, shall be used in all cases to which they refer and are applicable, and when so used shall be sufficient in law.

Writ for a County or Borough at a Parliamentary Election.

* The name of the Sovereign may be altered when necessary.

† Insert "sheriff" or other returning officer.

‡ This preamble to be omitted except in case of a general election.

§ Except in a general election insert here in the place of *A. B.*, deceased, or otherwise, stating the cause of vacancy.

* Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to the † of the county [or borough] of

greeting :

‡ Whereas by the advice of our Council we have ordered a Parliament to be holden at Westminster on the day of next. We command you that, notice of the time and place of election being first duly given, you do cause election to be made according to law of members [or a member] to serve in Parliament for the said county [or the division of said county, or the borough, or as the case may be] of § and that you do cause the names of such members [or member] when so elected, whether they [or he] be present or absent, to be certified to us, in our Chancery, without delay.

Witness ourself at Westminster, the day of
in the year of our reign, and in the year of our
Lord 18 .

Label or direction of Writ.

To the † of .

A writ of a new election of members [or member] for the said county [or division of a county or borough, or as the case may be].

Endorsement.

Received the within writ on the day of 18 .

(Signed) *A. B.*,

High Sheriff [or Sheriff, or Mayor, or as the case may be].

Certificate endorsed on the Writ.

I hereby certify that the members [or member] elected for in pursuance of the within-written writ, are

[or is] A. B. of in the county of and **Sched. 2.**
 C. D. of in the county of —

(Signed) A. B.,

High Sheriff [or Sheriff, or Mayor, or as the case may be].

Note.—A separate writ will be issued for each county as defined for the purposes of Parliamentary election.

Form of Notice of Parliamentary Election.

The returning officer of the of
 will, on the day of now next ensuing,
 between the hours of and , proceed to the
 nomination, and, if there is no opposition, to the election, of a
 member [or members] for the said county [or division of a
 county or borough] at the*

* Insert descrip-
 tion of place
 and room.

Forms of nomination paper may be obtained at *,
 between the hours of and on .

Every nomination paper must be signed by two registered electors as proposer and seconder, and by eight other registered electors as assenting to the nomination.

Every nomination paper must be delivered to the returning officer by the candidate proposed, or by his proposer and seconder, between the said hours of and on the said day of at the said .*

Each candidate nominated, and his proposer and seconder and one other person selected by the candidate, and no other persons, are entitled to be admitted to the room.

In the event of the election being contested, the poll will take place on the day of

(Signed) A. B.,

Sheriff [or Mayor, or as the case may be].

day of 18 .

Take notice, that all persons who are guilty of bribery, treating, undue influence, personation, or other corrupt practices, or any illegal practice, at the said election will, on conviction of such offence, be liable to the penalties mentioned in that behalf in "The Corrupt Practices Prevention Act, 1854," "The Corrupt and Illegal Practices Prevention Act, 1883," and the Ballot Act, 1872, and the Acts amending the said Acts.

Sched. 2. *Form of Nomination Paper in Parliamentary Election.*

We, the undersigned *A. B.* of in the of
of and *C. D.* of in the of ,
being electors for the of , do
hereby nominate the following person as a proper person to
serve as member for the said in Parliament :

Surname.	Other Names.	Abode.	Rank, Profession or Occupation.
BROWN	John 	52, George Street, Bristol.	Merchant
JONES ...	<i>or</i> WILLIAM DAVID ...	High Elms, Wilts	Esquire.
MERTON	<i>or</i> Hon. GEORGE TRA- VIS, commonly called Viscount.	Swanworth, Berks	Viscount.
SMITH ...	<i>or</i> HENRY SYDNEY ...	72, High St., Bath	Attorney.

(Signed) *A. B.*
 C. D.

We, the undersigned, being registered electors of the do hereby assent to the nomination of the above-mentioned *John Brown* as a proper person to serve as member for the said in Parliament.

(Signed) *E. F.*, of
 G. H., of
 I. J., of
 K. L., of
 M. N., of
 O. P., of
 Q. R., of
 S. T., of

Note.—Where a candidate is an Irish peer, or is commonly known by some title, he may be described by his title as if it were his surname.

Form of Ballot Paper.
Form of Front of Ballot Paper.

Sched. 2.

Counterfoil
No.

NOTE :
The counter-
foil is to have a
number to corre-
spond with that
on the back of
the Ballot Paper.

1	BROWN (John Brown, of 52, George Street, Bristol, merchant.)	
2	JONES (William David Jones, of High Elms, Wilts, Esq.)	
3	MERTON (Hon. George Travis, commonly called Viscount Merton, of Swan- worth, Berks.)	
4	SMITH (Henry Sydney Smith, of 72, High Street, Bath, Attorney.)	

Form of Back of Ballot Paper.

No.

Election for county [or borough, or ward].
18 .

Note.—The number on the ballot paper is to correspond with that in the counterfoil.

Directions as to Printing Ballot Paper.

Nothing is to be printed on the ballot paper except in accordance with this schedule.

The surname of each candidate, and if there are two or more candidates of the same surname, also the other names of such candidates, shall be printed in large characters, as shown in the form, and the names, addresses, and descriptions, and the number on the back of the paper, shall be printed in small characters.

*Form of Directions for the Guidance of the Voter in voting, which shall be printed in conspicuous Characters, and placarded outside every Polling Station and in every Com-
partment of every Polling Station.*

The voter may vote for candidate

Sched. 2.

The voter will go into one of the compartments, and, with the pencil provided in the compartment, place a cross on the right-hand side, opposite the name of each candidate for whom he votes, thus X

The voter will then fold up the ballot paper so as to show the official mark on the back, and leaving the compartment will, without showing the front of the paper to any person, show the official mark on the back to the presiding officer, and then, in the presence of the presiding officer, put the paper into the ballot box, and forthwith quit the polling station.

If the voter inadvertently spoils a ballot paper, he can return it to the officer, who will, if satisfied of such inadvertence, give him another paper.

If the voter votes for more than candidate, or places any mark on the paper by which he may be afterwards identified, his ballot paper will be void, and will not be counted.

If the voter takes a ballot paper out of the polling station, or deposits in the ballot box any other paper than the one given him by the officer, he will be guilty of a misdemeanour, and be subject to imprisonment for any term not exceeding six months, with or without hard labour.

Note.—These directions shall be illustrated by examples of the ballot paper.

Form of Statutory Declaration of Secrecy.

I solemnly promise and declare that I will not at this election for do anything forbidden by section 4 of the Ballot Act, 1872, which has been read to me.

Note.—The section must be read to the declarant by the person taking the declaration.

Form of Declaration of inability to read.

I, A. B., of , being numbered on the Register of Voters for the county [or borough] of , do hereby declare that I am unable to read.

A. B., his mark.

day of

I, the undersigned, being the presiding officer for the polling station for the county [or borough] of , do hereby certify, that the above declaration, having been first

read to the above-named *A. B.*, was signed by him in my Schedules 2 & 3 presence with his mark.

Signed, *C.D.*,
 Presiding officer for polling station
 for the county [or borough] of
 day of

THIRD SCHEDULE.

Provisions of Registration Acts referred to in Part III. of the foregoing Act :

Session and Chapter.	Title.	Part applied.
<i>As to England.</i>		
6 & 7 Vic. c. 18.	An Act to amend the law for the registration of persons entitled to vote, and to define certain rights of voting, and to regulate certain proceedings in the elections of members to serve in Parliament for England and Wales.	Sections eighty-five to eighty-nine, both inclusive.
<i>As to Ireland.</i>		
13 & 14 Vic. c. 69.	An Act to amend the laws which regulate the qualifications and registration of Parliamentary voters in Ireland, and to alter the law for rating immediate lessors of premises to the poor rate in certain boroughs.	Sections ninety-two to ninety-six, both inclusive.

An Act to regulate the Expenses and to control the Charges of Returning Officers at Parliamentary Elections.

38 & 39 VIC. c. 84.

13th August, 1875.

WHEREAS it is expedient to amend the law relating to the expenses and charges of returning officers at Parliamentary elections :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords, spiritual and

temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Construction of Act.

1. The Ballot Act, 1872, as modified by this Act, and this Act shall be construed as one Act.

This Act shall apply only to Parliamentary elections.

Payments to returning officers.

2. The returning officer at an election shall be entitled to his reasonable charges, not exceeding the sums mentioned in the first schedule to this Act, in respect of services and expenses of the several kinds mentioned in the said schedule, which have been properly rendered or incurred by him for the purposes of the election.

The amount of such charges shall be paid by the candidates at the election in equal several shares, or where there is only one candidate, by such candidate. If a candidate is nominated without his consent, the persons by whom his nomination is subscribed shall be jointly and severally liable for the share of the charges for which he would be liable if he were nominated with his consent.

A returning officer shall not be entitled to payment for any other services or expenses, or at any greater rates than as in the said schedule mentioned, any law or usage to the contrary notwithstanding.

Returning officer may require deposit or security.

3. The returning officer, if he think fit, may, as hereinafter provided, require security to be given for the charges which may become payable under the provisions of this Act in respect of any election.

The total amount of the security which may be required in respect of all the candidates at an election shall not in any case exceed the sums prescribed in the third schedule to this Act.

Where security is required by the returning officer it shall be apportioned and given as follows ; viz.,

- (1.) At the end of the two hours appointed for the election the returning officer shall forthwith declare the number of the candidates who then stand nominated, and shall, if there be more candidates nominated than there are vacancies to be filled up, apportion equally among them the total amount of the required security ;
- (2.) Within one hour after the end of the two hours aforesaid, security shall be given, by or in respect of each candidate then standing nominated, for the amount so apportioned to him ;
- (3.) If in the case of any candidate security is not given or tendered as herein mentioned, he shall be deemed

to be withdrawn within the provisions of the Ballot Act, 1872;

- (4.) A tender of security in respect of a candidate may be made by any person :
- (5.) Security may be given by deposit of any legal tender or of notes of any bank being commonly current in the county or borough for which the election is held, or, with the consent of the returning officer, in any other manner :
- (6.) The balance (if any) of a deposit beyond the amount to which the returning officer is entitled in respect of any candidate shall be repaid to the person or persons by whom the deposit was made.

4. Within twenty-one days after the day on which the return is made of the persons elected at the election, the returning officer shall transmit to every candidate or other person from whom he claims payment either out of any deposit or otherwise of any charges in respect of the election, or to the agent for election expenses of any such candidate, a detailed account showing the amounts of all the charges claimed by the returning officer in respect of the election, and the share thereof which he claims from the person to whom the account is transmitted. He shall annex to the account a notice of the place where the vouchers relating to the account may be seen, and he shall, at all reasonable times and without charge, allow the person from whom payment is claimed, or any agent of such person, to inspect and take copies of the vouchers.

The accounts of a returning officer may be taxed.

The returning officer shall not be entitled to any charges which are not duly included in his account.

If the person from whom payment is claimed objects to any part of the claim, he may, at any time within fourteen days from the time when the account is transmitted to him, apply to the Court as defined in this section for a taxation of the account, and the Court shall have jurisdiction to tax the account in such manner and at such time and place as the Court thinks fit, and finally to determine the amount payable to the returning officer, and to give and enforce judgment for the same as if such judgment were a judgment in an action in such Court, and with or without costs at the discretion of the Court.

The Court for the purposes of this Act shall be in the city of London the Lord Mayor's Court, and elsewhere in England the County Court, and in Ireland the Civil Bill Court, having jurisdiction at the place of nomination for the election to which the proceedings relate.

The Court may depute any of its powers or duties under this Act to the registrar or other principal officer of the Court.

Nothing in this section shall apply to the charge of the returning officer for publication of accounts of election expenses.

Claims against
a returning
officer.

5. Every person having any claim against a returning officer for work, labour, materials, services, or expenses in respect of any contract made with him, by or on behalf of the returning officer, for the purposes of an election, except for publication of accounts of election expenses, shall, within 14 days after the day on which the return is made of the person or persons elected at the election, transmit to the returning officer the detailed particulars of such claim in writing, and the returning officer shall not be liable in respect of anything which is not duly stated in such particulars.

Where application is made for taxation of the accounts of a returning officer, he may apply to the Court as defined in this Act to examine any claim transmitted to him by any person in pursuance of this section, and the Court after giving notice to such person, and after hearing him, and any evidence tendered by him, may allow or disallow, or reduce the claim objected to, with or without costs, and the determination of the Court shall be final for all purposes, and as against all persons.

Use of ballot
boxes, &c.,
provided for
municipal
elections.

6. In any case to which the fourteenth section of the Ballot Act, 1872, is applicable, it shall be the duty of the returning officer, so far as is practicable, to make use of ballot boxes, fittings, and compartments provided for municipal or school board elections, and the Court, upon taxation of his accounts, shall have regard to the provisions of this section.

Notices to be
given by
returning
officer.

7. There shall be added to every notice of election to be published under the provisions of the Ballot Act, 1872, the notification contained in the second schedule to this Act with respect to claims against returning officers.

Saving of the
universities.

8. Nothing in this Act shall apply to an election for any university or combination of universities.

Commencement
and duration of
Act.

9. This Act shall come into operation on the first day of October one thousand eight hundred and seventy-five, and continue in force until the thirty-first day of December one thousand eight hundred and eighty, and no longer, unless Parliament shall otherwise determine.

Short title.

10. This Act may be cited for all purposes as the "Parliamentary Elections (Returning Officers) Act, 1875."

Not to apply to
Scotland.

11. This Act shall not apply to Scotland.

SCHEDULES.

Sched. 1.

FIRST SCHEDULE.

CHARGES OF RETURNING OFFICERS.

The following are the maximum charges to be made by the returning officer, but the charges are in no case to exceed the sums actually and necessarily paid or payable.

PART I.—COUNTIES AND DISTRICT OR CONTRIBUTORY BOROUGHES.

This Part of this Schedule applies to an election for a county, or for either of the boroughs of Aylesbury, Cricklade, Monmouth, East Retford, Stroud, and New Shoreham, or for any borough or burgh consisting of a combination of separate boroughs, burghs or towns.

	£	s.	d.
For preparing and publishing the notice of election	2	2	0
For preparing and supplying the nomination papers	1	1	0
For travelling to and from the place of nomination, or of declaring the poll at a contested election, per mile	0	1	0
For hire or necessary fitting up of rooms or buildings for polling, or damage or expenses by or for use for such rooms or buildings.	The necessary expenses, not exceeding at any one polling station the charge for constructing and fitting a polling station.		
For constructing a polling station, with its fittings and compartments, in England.	7	7	0

And in Ireland the sum or sums payable under the provisions of the 13th and 14th Vic. c. 68, and 35th and 36th Vic. c. 33.

In Ireland, the returning officer shall use a Court-house where one is available, as a polling station, and his maximum charge for using and fitting the same shall in no case exceed three pounds three shillings.

	£	s.	d.
Sched. 1. For each ballot box required to be purchased.	1	1	0
For the use of each ballot box, when hired	0	5	0
For stationery at each polling station ...	0	10	0
For printing and providing ballot papers, per thousand.	1	10	0
For each stamping instrument	0	10	0
For copies of the register	The sums payable by statute for necessary copies		
For each presiding officer	3	3	0
For one clerk at each polling station where not more than 500 voters are assigned to each station.	1	1	0
For an additional clerk at a polling station for every number of 500 voters, or fraction thereof beyond the first 500 assigned to such polling station.	1	1	0
For every person employed in counting votes, not exceeding six such persons where the number of registered electors does not exceed 3,000, and one for every additional 2,000 electors.	1	1	0
For making the return to the clerk of the Crown.	1	1	0
For the preparation and publication of notices (other than the notice of election).	Not exceeding for the whole of such notices £20, and £1 for every additional 1,000 electors above 3,000.		
For conveyance of ballot boxes from the polling stations to the place where the ballot papers are to be counted, per mile.	0	1	0
For professional and other assistance in and about the conduct of the election.	In a contested election not exceeding £25, and an additional £3 for every 1,000 registered electors or fraction thereof above 3,000, and up to		

	10,000, and £2 for every 1,000 or fraction thereof above 10,000. In an uncontested election, one- fifth of the above sums.	Sched. 1. —
For travelling expenses of presiding officers and clerks, per mile.	0 1 0	
For services and expenses in relation to receiving and publishing accounts of election expenses, in respect of each candidate	2 2 0	
For all other expenses	In a contested election, not exceeding £10, and an additional £1 for every 1,000 electors or fraction thereof above 1,000. In an uncontested election, nil.	

NOTE.—Travelling expenses are not to be allowed in the case of any person, unless for distances exceeding two miles from the place at which he resides.

PART II.—BOROUGHES.

This Part of the Schedule applies to all Boroughs not included in Part I. of this Schedule.

	£ s. d.	
For preparing and publishing the notice of election.	2 2 0	
For preparing and supplying the nomination papers.	1 1 0	
For hire or necessary fitting up of rooms or buildings for polling, or damage or expenses by or for use of such rooms or buildings.	The necessary expenses, not exceeding at any one polling station the charge for constructing and fitting a polling station.	

	£	s.	d.
Sched. 1. In England, for constructing a polling station with its fittings and compartments, not exceeding two in number.	7	7	0
For each compartment required to be constructed, when more than two are used.	1	1	0
For the use of each compartment hired, when more than two are used.	0	5	0
And in Ireland, in lieu of the charges payable in respect of the foregoing last three services, the sum or sums payable under the provisions of 13th and 14th Vic. c. 68, and 35th and 36th Vic. c. 33.			
For each ballot box required to be purchased.	1	1	0
For the use of each ballot box, when hired	0	5	0
For stationery at each polling station ...	0	10	0
For printing and providing ballot papers, per thousand.	1	10	0
For each stamping instrument ...	0	10	0
For copies of the register ...	The sums payable by statute for the necessary copies.		
For each presiding officer ...	3	3	0
For one clerk at each polling station where not more than 500 voters are assigned to such station.	1	1	0
For an additional clerk at a polling station for every number of 500 voters, or fraction thereof beyond the first 500 assigned to such station.	1	1	0
For every person employed in counting votes, not exceeding six such persons where the number of registered electors does not exceed 3,000, and one for every additional 2,000 electors.	1	1	0
For making the return to the clerk of the Crown.	1	1	0
For the preparation and publication of notices (other than the notice of election).	Not exceeding for the whole of such notices £10, and £1 for every additional 1,000 electors above 1,000.		

For professional and other assistance in In a contested Scheds. 1 & 2,
and about the conduct of the election.

election, not exceeding £20, and an additional £2 for every 1,000 registered electors or fraction thereof above 1,000 and up to 10,000, and £1 additional for every 1,000 or fraction thereof above 10,000. In an uncontested election, one-fifth of the above sum.

1 1 0

For services and expenses in relation to receiving and publishing accounts of election expenses, in respect of each candidate.

For all other expenses Not exceeding £10 and an additional £1 for every 1,000 electors above the first 1,000.

NOTE TO PARTS I. AND II. OF SCHEDULE 1.

The above sums are the aggregate charges, the amount of which is to be apportioned among the several candidates or other persons liable for the same.

SECOND SCHEDULE.

1. Notification to be added to the Notice of Election.

Take notice, that by the Parliamentary Elections (Returning Officers') Act, 1875, it is provided that every person having any claim against a returning officer for work, labour, materials, services, or expenses in respect of any contract made with him by or on behalf of the returning officer, for the purposes of an election (except for publications of account of election expenses), shall, within fourteen days after the day on which the return is made of the person or persons elected at the election, transmit to the returning officer the detailed

Scheds. 2 & 3. particulars of such claim in writing, and the returning officer shall not be liable in respect of anything which is not duly stated in such particulars.

THIRD SCHEDULE.

MAXIMUM AMOUNT of SECURITY which may be required by a RETURNING OFFICER.

	County or District of Contributory Borough.	Borough.
	£	£
Where the registered electors do not exceed 1,000.	150	100
Where the registered electors exceed 1,000 but do not exceed 2,000.	200	150
Where the registered electors exceed 2,000 but do not exceed 4,000.	275	200
Where the registered electors exceed 4,000 but do not exceed 7,000.	400	250
Where the registered electors exceed 7,000 but do not exceed 10,000.	550	300
Where the registered electors exceed 10,000 but do not exceed 15,000.	700	450
Where the registered electors exceed 15,000 but do not exceed 20,000.	800	500
Where the registered electors exceed 20,000 but do not exceed 30,000.	900	600
Where the registered electors exceed 30,000.	1,000	700

If at the end of two hours appointed for the election, not more candidates stand nominated than there are vacancies to be filled up, the maximum amount which may be required is one fifth of the maximum according to the above scale.

An Act to enable Returning Officers at Parliamentary Elections in Scotland to require security for their expenses; and otherwise to amend the law of Scotland relating to such expenses.

(41 & 42 VIC. c. 41).

8th August, 1878.

WHEREAS it is expedient to amend the law relating to the expenses and charges of returning officers at Parliamentary

elections in Scotland, and otherwise to amend the law of Scotland relating to such expenses.

Be it enacted by the Queen's Most Excellent Majesty, by and with the consent of the Lords, spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited for all purposes as the Parliamentary Elections, Returning Officers Expenses (Scotland) Act, 1878, and the Ballot Act, 1872, as modified by this Act, and this Act shall be construed as one Act. Short title and construction of Act. 35 & 36 Vic. c. 33.

2. This Act shall extend to Scotland only, and only to Parliamentary elections. Extent of Act.

3. The returning officer, if he think fit, may, as hereinafter provided, require security to be given for the charges which may become payable under the provisions of any Act of Parliament in respect of any election. Returning Officer may require deposit or security.

The total amount of the security which may be required in respect of all the candidates at an election shall not in any case exceed the sums prescribed in the schedule to this Act.

Where security is required by the returning officer it shall be apportioned and given as follows—viz.:

- (1.) At the end of the two hours appointed for the election the returning officer shall forthwith declare the number of the candidates who then stand nominated, and shall, if there be more candidates nominated than there are vacancies to be filled up, apportion equally among them the total amount of the security required :
- (2.) Within one hour after the end of the two hours aforesaid, security shall be given, by or in respect of each candidate then standing nominated, for the amount so apportioned to him :
- (3.) If in the case of any candidate security is not given or tendered as herein mentioned, he shall be deemed to be withdrawn within the provisions of the Ballot Act, 1872 : 35 & 36 Vic. c. 33.
- (4.) A tender of security in respect of a candidate may be made by any person.
- (5.) Security may be given by deposit of any legal tender or of notes of any bank being commonly current in the county or burgh for which the election is held, or, with the consent of the returning officer, in any other manner :

Schedule.

(6.) The balance (if any) of a deposit beyond the amount to which the returning officer is entitled in respect of any candidate shall be repaid to the person or persons by whom the deposit was made.

Use of ballot boxes, &c. provided for municipal elections.
35 & 36 Vic.
c. 53, s. 14.

4. In any case to which the fourteenth section of the Ballot Act, 1872, is applicable, it shall be the duty of the returning officer, so far as is practicable, to make use of ballot boxes, fittings, and compartments provided for municipal or school board elections, and the Court, upon taxation of his accounts, shall have regard to the provisions of this section.

Saving of the Universities.

5. Nothing in this Act shall apply to an election for any university or combination of universities.

Commencement and duration of Act.

6. On and after the passing of this Act it shall come into operation, and shall continue in force until the thirty-first day of December one thousand eight hundred and eighty, and no longer, unless Parliament shall otherwise determine.

SCHEDULE.

Maximum amount of security which may be required by a returning officer.

	County or District of Contributory Burghs.	Burgh.
	£	£
Where the registered electors do not exceed 1,000.	150	100
Where the registered electors exceed 1,000 but do not exceed 2,000.	200	150
Where the registered electors exceed 2,000 but do not exceed 4,000.	275	200
Where the registered electors exceed 4,000 but do not exceed 7,000.	400	250
Where the registered electors exceed 7,000 but do not exceed 10,000.	550	300
Where the registered electors exceed 10,000 but do not exceed 15,000.	700	450
Where the registered electors exceed 15,000 but do not exceed 20,000.	800	500
Where the registered electors exceed 20,000 but do not exceed 30,000.	900	600
Where the registered electors exceed 30,000 but do not exceed 40,000.	1,000	700
Where the registered electors exceed 40,000 but do not exceed 50,000.	—	1,000
Where the registered electors exceed 50,000 but do not exceed 60,000.	—	1,300
Where the registered electors exceed 60,000.	—	1,600

If at the end of two hours appointed for the election, not more candidates stand nominated than there are vacancies to be filled up, the maximum amount which may be required is one-fifth of the maximum according to the above scale.

An Act to amend and continue the Acts relating to Election Petitions, and to the Prevention of Corrupt Practices at Parliamentary Elections.

42 & 43 VIC. C. 75.

[15th August, 1879.

BE it enacted as follows:—

1. This Act may be cited as the Parliamentary Elections and Corrupt Practices Act, 1879.

Short title.

2. The trial of every election petition, and the hearing of an application for the withdrawal of an election petition, shall be conducted before two Judges instead of one; and the Parliamentary Elections Act, 1868, shall be construed as if for the purpose of hearing and determining the petition at the trial, and of hearing and determining any application for the withdrawal of an election petition two Judges were mentioned, and additional Judges shall, if necessary, be placed on the rota accordingly.

Trial of election petition to be conducted before two Judges.

Every certificate and every report sent to the Speaker in pursuance of the said Act shall be under the hands of both Judges, and if the Judges differ as to whether the member whose return or election is complained of was duly returned or elected, they shall certify that difference, and the member shall be deemed to be duly elected or returned; and if the Judges determine that such member was not duly elected or returned, but differ as to the rest of the determination, they shall certify that difference, and the election shall be deemed to be void; and if the Judges differ as to the subject of a report to the Speaker, they shall certify that difference and make no report on the subject on which they so differ.

Save as aforesaid, any order, Act, application or thing for the purposes of the said Act, may continue to be made or done by, to, or before one Judge. The expenses incident to the sitting of two Judges shall be defrayed as the expenses of one Judge are payable under the provisions of the said Act.

The Parliamentary and Corrupt Practices Act, 1880.

43 VIC. C. 18.

The whole Act is repealed (*supra*, p. 325) except ss. 1 and 3, as to which see note *supra*, p. 328.

The Supreme Court of Judicature Act, 1881.

44 & 45 Vic. c. 68, s. 13.

Selection of
Judges for trial
of election
petitions. 31 &
32 Vic., c. 125.

13. The Judges to be placed on the rota for the trial of election petitions in England in each year, under the provisions of the Parliamentary Elections Act, 1868, or any Act amending the same, shall henceforth be selected out of the Judges of the Queen's Bench Division of the High Court of Justice in such manner as may be provided by any Rules of Court to be made for that purpose; and subject thereto, shall be selected as follows (that is to say), the Judges of the Queen's Bench Division of the said High Court shall, on or before the 4th day of November in every year, select, by a majority of votes, three of the puisne Judges of such Division (none of whom shall be a Member of the House of Lords) to be placed on the rota for the trial of election petitions during the ensuing year.

If in any case the Judges of the said division present at the time of their meeting to make such selection are equally divided in their choice of any Judge to be placed on the rota, the Lord Chief Justice of England, or, in case of his absence, the senior Judge then present, shall have a second or casting vote.

The choice of a Judge to fill any occasional vacancy upon the rota, or to assist the Judge on the rota as an additional Judge, shall be made in like manner.

The Judges who at the time of the passing of this Act shall be upon the rota for the trial of election petitions shall continue upon such rota until the end of the year for which they have been appointed, in the same manner as if this Act had not passed.

If at the end of the year for which any such Judge shall have been appointed, whether before or after the passing of this Act, any trial or other matter shall be pending before him, either alone or together with any other Judge, and not concluded, or if after the conclusion of any such trial, or of the hearing of any such matter, judgment shall not have been given thereon, it shall be lawful for every such Judge to proceed with and to conclude such pending trial or other matter, and to give judgment thereon, after the end of such year, in the same manner in all respects as if the year for which he was appointed had not expired.

Jurisdiction of
High Court in
registration and
election cases;
28 & 29 Vic. c.
36.

14. The jurisdiction of the High Court of Justice to decide questions of law, upon appeal or otherwise, under the Act of the sixth and seventh years of Her Majesty, chapter eighteen, the County Voters' Registration Act, 1865, the Parliamentary

Elections Act, 1868, the Corrupt Practices (Municipal Elections) Act, 1872, the Parliamentary and Municipal Registration Act, 1878, or any of the said Acts, or any Act amending the same respectively, shall henceforth be final and conclusive, unless in any case it shall seem fit to the said High Court to give special leave to appeal therefrom to Her Majesty's Court of Appeal, whose decision in such case shall be final and conclusive.

19. As to the power of making Rules of Court, *see* this section, *supra*, p. 274.

Municipal Corporations Act, 1882.

45 & 46 Vic. c. 50.

PART IV.—CORRUPT PRACTICES.

77. In this part, "bribery," "treating," "undue influence" and "personation," include respectively anything done before, at, after, or with respect to a municipal election, which, if done before, at, after, or with respect to a Parliamentary election, would make the person doing the same liable to any penalty, punishment, or disqualification for bribery, treating, undue influence, or personation, as the case may be, under any Act for the time being in force with respect to Parliamentary elections:

Corrupt
Practices.
Definitions.

"Corrupt practice" means bribery, treating, undue influence, or personation:

"Candidate" means a person elected, or having been nominated, or having declared himself a candidate for election, to a corporate office:

"Canvasser" means any person who solicits or persuades, or attempts to persuade, any person to vote or to abstain from voting at a municipal election, or to vote or to abstain from voting for a candidate at a municipal election:

"Voter" means a burgess or a person who votes or claims to vote at a municipal election:

"Election Court" means a Court constituted under this Part for the trial of an election petition:

"Municipal election petition" or "election petition" means a petition under this Part complaining of an undue municipal election:

"Parliamentary election petition" means a petition under the Parliamentary Elections Act, 1868:

31 & 32 Vic.
c. 125.

"Prescribed" means prescribed by general rules made under this part:

"Borough" and "election," when used with reference to a

petition, mean the borough and election to which the petition relates.

General penalties for corrupt practices.

78. A person guilty of a corrupt practice at a municipal election shall be liable to the like actions, prosecutions, penalties, forfeitures, and punishments as if the corrupt practice had been committed at a Parliamentary election.

Disqualifications and avoidance of election for corrupt practices by candidates.

79. (1.) Where it is found by the report of an Election Court that a corrupt practice has been committed by or with the knowledge and consent of a candidate at a municipal election, that candidate shall be deemed to have been personally guilty of a corrupt practice at the election, and his election, if he has been elected, shall be void; and he shall (whether elected or not) during seven years from the date of the report be subject to the following disqualifications:—

He shall be incapable of—

- (a) Holding or exercising any corporate office or municipal franchise, or being enrolled or voting as a Burgess.
- (b) Acting as a justice or holding any judicial office.
- (c) Being elected to, or sitting, or voting in Parliament.
- (d) Being registered or voting as a Parliamentary voter.
- (e) Being employed by a candidate in a Parliamentary or municipal election.
- (f) Acting as overseer or as guardian of the poor.

(2.) If any person is on indictment or information found guilty of a corrupt practice at a municipal election, or is in any action or proceeding adjudged to pay a penalty or forfeiture for a corrupt practice at a municipal election, he shall, whether he was a candidate at the election or not, be subject during seven years from the date of the conviction or judgment to all the disqualifications mentioned in this section.

(3.) If, after a person has become disqualified under this Part, any witness, on whose testimony he has become disqualified is, on his prosecution, convicted of perjury in respect of that testimony, the High Court may on motion, and on proof that the disqualification was procured by means of that perjury, order that the disqualification shall cease.

Disqualifications and avoidance of election for corrupt practices by agents, and for offences against this Part.

80. If it is found by an Election Court that a candidate has by an agent been guilty of a corrupt practice at a municipal election, or that any offence against this Part has been committed at a municipal election by a candidate, or by an agent for a candidate, with the candidate's knowledge and consent, the candidate shall during the period for which he was elected to serve, or for which, if elected, he might have served, be disqualified for being elected to and for holding

any corporate office in the borough, and if he was elected, his election shall be void.

81. A municipal election shall be wholly avoided by such general corruption, bribery, treating, or intimidation at the election as would by the common law of Parliament avoid a Parliamentary election. Avoidance of election for general corruption.

82. (1.) A burgess of a borough shall not be retained or employed for payment or reward by or on behalf of a candidate at a municipal election for that borough, or any ward thereof, as a canvasser for the purpose of the election. Paid agents and canvassers.

(2.) If any person is retained or employed in contravention of this prohibition, that person and also the person by whom he is retained or employed, shall be guilty of an offence against this Part, and shall be liable, on summary conviction, to a fine not exceeding ten pounds.

(3.) An agent or canvasser retained or employed for payment or reward for any of the purposes of a municipal election, shall not vote at the election; and if he votes he shall be guilty of an offence against this Part, and shall be liable on summary conviction to a fine not exceeding ten pounds.

83. If a candidate or an agent for a candidate pays or agrees to pay any money on account of the conveyance of a voter to or from the poll, he shall be guilty of an offence against this Part, and shall be liable on summary conviction to a fine not exceeding five pounds. Payment for conveyance of voters.

84. (1.) The costs and expenses of a prosecutor and his witnesses in the prosecution of any person for bribery, undue influence or personation at a municipal election, with compensation for trouble and loss of time, shall, unless the Court otherwise directs, be allowed, paid, and borne as in case of felony. Prosecution for corrupt practices.

(2.) The clerk of the peace of the borough, or if there is none, of the county in which the borough is situate, shall, if so directed by an Election Court, prosecute any person for bribery, undue influence, or personation at the election in respect of which the Court acts, or sue or proceed against any person for penalties for bribery, treating, undue influence, or any offence against this Part at the election.

85. The votes of persons in respect of whom any corrupt practice is proved to have been committed at a municipal election shall be struck off on a scrutiny. Striking off votes.

86. The enactments for the time being in force for the detection of personation and for the apprehension of persons charged with personation at a Parliamentary election shall apply in the case of a municipal election. Personation.

INSTRUCTIONS

Issued for the guidance of Returning Officers under the Ballot Act, 1872.

I.—PARLIAMENTARY ELECTIONS.

Preliminary.

Notices.

1. All notices required by the Act may be given by advertisements, placards, or in some similar manner (Rule 46).

**Meaning of
"election."**

Nomination.

2. In this Act the term "election" applies to elections which, not being contested, are completed at the time of nomination, as well as to elections which, being contested, are decided by a poll.

**Deputy return-
ing officers.
Section 8.**

3. A separate writ will be sent for each electoral division of a county, and the sheriff may appoint by writing a deputy to act as returning officer for all or any of the purposes of the election in such electoral division (s. 8).

**Times of
nomination
and poll.**

4. A time table, showing the limits of time allowed for the different stages in an election, is appended in a schedule to these instructions (*infra*, p. 432).

NOTE.—After the writ is in the hands of the returning officer, he must, in the case of a county election, give notice of the day of the election within two days after he receives the writ; for boroughs he must give the notice on the day on which he receives the writ or on the following day. The day of election must be fixed in counties or district boroughs not later than nine days after the receipt of the writ, and in other boroughs not later than four days. When the election is contested, the poll must take place in counties or district boroughs not less than two nor more than six clear days, and in the case of other boroughs not more than three clear days after the day fixed for the election.

**Notice of elec-
tion. Rule 1.**

5. The returning officer will, within the time limited by Rule 1, give notice between 9 a.m. and 4 p.m. of the several particulars specified in Rule 1. For this purpose he must fix the time and place of nomination (Rules 2, 3, 4), the time and place at which forms of nomination papers will be supplied (Rule 7), and the day of the poll (Rule 14). In the case of a county election notices are also to be sent by post (*see* Rule 1).

The form of the notice is given in the second schedule.

The old proclamation, and the holding of a County Court for the purposes of a county election, are abolished.

6. The time and place of nomination are to be fixed by the returning officer in accordance with Rule 2. It will be observed that the place of nomination is to be a room, and that no hustings will be required. Time and place of nomination. Rules 2, 3 and 4.

7. In the interval between the day of giving notice and the day of nomination, the returning officer is required to supply printed forms of nomination papers to electors during such two hours between 10 a.m. and 2 p.m. on each day as he may fix. He must therefore provide such forms as soon as possible after the receipt of the writ. Supply of nomination papers. Rule 7.

The form will be found in the second schedule.

8. On the day appointed for the nomination, the returning officer must attend at the appointed place during the two hours fixed for the nomination, in order to receive nominations, and for one hour afterwards in order to receive objections. No oath is now required to be taken by the returning officer (Rule 54). Attendance on day of nomination. Rule 4.

9. The only persons entitled to attend the proceedings at the time of nomination, except for the purpose of assisting the returning officer, are the returning officer and the candidate nominated by each nomination paper, with his proposer and seconder, and one other person selected by the candidate. Persons entitled to attend at nomination. Rule 8.

10. The returning officer will take care that the nomination paper is in the proper form, and is properly signed and delivered in accordance with section 1, and Rules 5, 6, and 7. The use of a form supplied by the returning officer, however advisable, is not obligatory, provided that the form prescribed in the Act is followed (Rule 7). Form of nomination paper. Sec. 1, Rules 5, 6, 7.

11. The objections which may be made to the validity of a nomination paper are of two kinds:— Objections to validity of nomination. Rules 6, 12, 13.

- (1.) Objections under Rule 6, which must be made immediately on the delivery of the nomination paper to the returning officer.
- (2.) Objections under Rule 12, which must be made either during the time appointed for the nomination or within one hour afterwards.

The returning officer is to determine the validity of any objection (Rule 13), but he will bear in mind that the making or allowing trivial objections may lead to the delay and expense of a petition.

12. Immediately after each nomination paper has been Notice of

nomination.
Rule 11.

delivered to the returning officer, notice of the nomination is to be placarded outside the building.

Withdrawal of
nomination.
Section 1.

13. A candidate once nominated, unless nominated in his absence from the United Kingdom, can only withdraw from his candidature by delivering to the returning officer, *during the time appointed for the nomination*, a notice of withdrawal signed by himself.

Uncontested
election. Sec. 1,
Rules 43, 44, 45.

14. If at the expiration of one hour after the time appointed for the nomination the number of candidates who have been duly nominated and not withdrawn does not exceed the number of vacancies to be filled up, the returning officer is forthwith to declare the candidates so duly nominated to be elected, to give public notice of the names of the candidates elected (Rules 45, 46), and to return their names to the Clerk of the Crown in Chancery (s. 1, Rule 44). This notice must also state the names of any candidates who may have withdrawn, and the names of the subscribers to their nomination papers (Rule 10). The return is to be made by a certificate endorsed on the writ, and may be sent by post (Rule 44). The indenture by which the return was formerly made is abolished.

Contested
election. Sec. 1,
Rules 9, 46.

15. If at the expiration of one hour after the time appointed for the nomination the number of the candidates who have been duly nominated, and not withdrawn, exceeds the number of vacancies to be filled up, the returning officer is to adjourn the election and to give public notice of the particulars specified in Rules 9, 10. In the case of a county election the notice must also be given to the postmaster to be telegraphed (Rule 9).

Proceedings in
case of death of
candidate.

16. If a candidate dies in the interval after the adjournment of the election and before the poll has commenced, notice of the poll is to be countermanded and the proceedings commenced afresh (s. 1).

The Poll.

Notice of poll
Rule 19.

17. In cases where a poll is required, the returning officer must, immediately after the adjournment of the election, give public notice of the matters specified in Rule 19. The form of directions as to the mode in which electors are to vote is given in the second schedule, and must be placarded outside every polling station, and in every compartment of every polling station, and illustrated by examples of the ballot paper.

Preparations
for poll.

18. In the event of a poll being required, the first business of the returning officer will be to provide polling stations, appoint presiding officers and clerks for each polling station and provide a sufficient supply of ballot boxes, ballot papers,

materials for marking ballot papers, stamping instruments, and copies of the register of voters. He must also, as under the previous law (6 Vic. c. 18, s. 90), provide a sufficient number of constables to attend at each polling station.

19. The office of a presiding officer is equivalent to that of a deputy returning officer under the previous law (s. 10). There is to be one presiding officer for each polling station (Rule 21), but the returning officer himself may act as a presiding officer (Rule 47), and no doubt will do so when there is only one polling station. The returning officer may appoint clerks to assist the presiding officer at each station (s. 8, Rule 48), but he will of course not do so where the number of voters at a station is small. A presiding officer or clerk must not have been employed in or about the election (Rule 49), and must not act by himself, his partner or clerk, as an agent for the candidate (s. 11). Presiding officer.

20. The returning officer must provide each polling place with at least one polling station under a separate presiding officer (Rule 15), and must furnish each polling station with such number of compartments as allows one compartment to every one hundred and fifty persons entitled to vote at the station (Rule 16). Polling stations.

"Polling place," in the case of a county, means some town or village at which the electors of a polling district are to poll; and in the case of a borough, means the particular spot in each borough or polling district of a borough which the returning officer under the previous law has power to fix as the place at which the votes are to be taken (Rule 57). The term "district borough" in Rule 15 is explained in Rule 57.

The polling station may be either in a room or a booth, but s. 37 of 30 & 31 Vic. c. 102, directs that a room is to be used where practicable. Under s. 6, any room in a school receiving an annual grant out of moneys provided by Parliament, and any room the expense of maintaining which is payable out of any local rate, may be taken compulsorily, and used free of charge, for the purpose of a polling station, subject to the necessity of making good any damage actually done, and of defraying any expenses actually incurred by the persons having control over the room taken on account of its being so taken. Care will of course be taken to interfere as little as practicable with the ordinary use of the room, and to use all possible speed in erecting and taking away the necessary fittings. More than one polling station may, if necessary, be fitted up in the same room (Rule 17).

Construction of
polling stations.

21. Care must be taken that the partitions dividing the compartments in the polling stations are sufficient to effectually screen the voter from observation (Rule 16). It may be found advantageous that each polling station should contain on one side the seats of the presiding officer and his clerks, and of the personation agents entitled to attend, and on the other side the compartments into which the voters are to retire in order to mark their votes. It will be convenient so to arrange the room that voters who have marked their papers can reach the ballot box and leave the station without meeting the fresh voters who are entering the station.

Ballot box.

22. The ballot box must be constructed so that ballot papers can be introduced therein, and not withdrawn without unlocking the box (Rule 23). Care should be taken that the ballot box is of adequate size, so that it will not be choked by papers, and that it is of sufficient strength to enable it to be carried about with safety. Ballot boxes provided for municipal elections may be used, free of charge, for Parliamentary elections, and *vice versa* (s. 14).

NOTE.—And the 38 & 39 Vic. c. 84, s. 6, referring to this section, provides that the returning officer shall, as far as practicable, make use of ballot boxes and other appliances provided for municipal or school board elections, and upon taxation of accounts the Court shall have regard to this provision.

Ballot papers.

23. The ballot papers must be printed strictly in accordance with Rule 22, and with the form in the second schedule.

The names of those candidates only who have been duly nominated and not withdrawn can be printed on the ballot papers (Rule 12). Ballot papers of a different colour must be provided for "tendered votes" (Rule 27). Every ballot paper must have a counterfoil, and must be numbered on the back with a number corresponding to that on the face of the counterfoil (s. 2). As the object of the numbering is to make it possible to ascertain how votes have been given in the event of a scrutiny, all the ballot papers in any one election, at whatever station they are used, ought to be numbered in a continuous series. The ballot papers and counterfoils should be bound up in books like ordinary cheque or receipt books.

Care must be taken that no ballot paper is supplied to any presiding officer except by the returning officer, or to any other person except by the presiding officer in the station at the time of voting, in accordance with the Act (*see penalties in s. 3*).

The returning officer must keep accounts of the number of ballot papers supplied to each presiding officer (*see* paragraph 47).

NOTE.—The requirements as to marking ballot papers appear to be that the voter should show for which candidate he intends to vote, that no excess of votes are given; and it must not be marked in any way to render it possible to identify the vote with any particular voter, nor to leave it doubtful whether he intended to vote at all. (*Woodwood v. Sarson*, L.B., 10 C. P. 733.)

24. The official mark to be stamped on the ballot paper is to be kept secret (Rule 20). As the mark is to be visible on both sides of the paper (s. 2, Rule 24), a perforating or embossing stamp should be used. Stamping instruments.

25. Each compartment in the polling station should be supplied with pencils for voters to mark the ballot papers (Rule 20, and *see* directions in second schedule). Writing materials.

NOTE.—The Lords of Session in Scotland decided that certain votes marked in ink were good, notwithstanding pencils only had been provided by the returning officer.

26. Each polling station must be supplied with a copy of the register of voters, or such part thereof as contains the names of the voters allotted to vote at that station (Rule 20). Register books.

27. Before the opening of the poll, the returning officer, and every officer, clerk, and agent authorised to attend at the polling station or at the counting of the votes, must make a declaration of secrecy in the form provided in the second schedule (Rule 54). The person administering this declaration must, before it is taken, read over s. 4 of the Act to the declarant. All other oaths are abolished (Rule 54). Declaration of secrecy.

28. The only persons entitled to attend at the polling station are the presiding officer, the personation agents of whose appointment notice has been given in accordance with 6 and 7 Vic. c. 18, s. 85 (*see* Rule 57), or with Rule 56, the candidates themselves if they wish (Rule 51), and the constables on duty. Check-clerks and the commissioners who might have been appointed to administer oaths under 34 Geo. III. c. 73, and 42 Geo. III. c. 62, are abolished (*see* repeals in third schedule). Persons entitled to attend at the polling stations.

29. The hours of poll remain unaltered. Just before the commencement of the poll the presiding officer at each polling station is to show the ballot box empty to such persons as Commencement of poll.

may be present, and then to lock it up and seal it (Rule 23). He should then place it near him and keep it in his view.

Powers and
duties of
presiding officer
during poll.

30. The presiding officer has all the powers of a deputy returning officer under the previous law (s. 10). He has power to ask the authorised questions and administer the authorised oaths (s. 10). The presiding officer may delegate to his clerks any of his powers, except that of ordering the arrest, exclusion, or ejection of any person (Rule 50). The attention of each presiding officer will have been particularly directed to his declaration of secrecy to the provisions of s. 4, and should be directed to the powers of maintaining order conferred by s. 9. It will be his duty to see that secrecy of voting is strictly maintained, to prevent unauthorised persons from entering the station, to direct the constables on duty only to admit a limited number of voters at any one time (Rule 21), and to see that each voter votes secretly in accordance with the Act, and without undue delay, and leaves the station immediately after giving his vote (Rule 25).

Functions of
personation
agents.

31. Candidates may appoint agents for the purpose of detecting personation (6 and 7 Vic. c. 18, s. 85), an offence the definition of which is extended by s. 24. These agents are also entitled, under Rule 26, to be present at the voting of illiterate voters. They are to take the same declaration of secrecy as the presiding officer (Rule 54), and are expressly prohibited from interfering with the voters or applicants for ballot papers, from attempting to look at the ballot papers or obtain information as to how any vote is given, and from communicating to any person any information about any vote or the number of any ballot paper (s. 4). It will be the duty of the presiding officer to see that the agents conform to the directions of the Act, and to remove them if they misconduct themselves (s. 9).

Mode of voting.

32. The mode of voting in ordinary cases is described in s. 2, in Rules 24 and 25, and in the directions contained in the second schedule. The result is as follows:—

When the voter comes up to vote, the presiding officer or his clerk (*see* Rule 50) will ascertain that he is entitled to vote at that particular station (Rule 18), he will then mark one of the official ballot papers with the official mark, so that it be visible on both sides; call out the number, name, and description of the voter, as stated in the copy of the register; enter such number on the counterfoil of the ballot paper; place against the number of the voter in the register a tick, which will denote that the voter has received a ballot paper,

but will not denote the particular ballot paper which he has received; and will then deliver the ballot paper to the voter.

The old law as to the questions which may be asked of the voter, and the oath which may be administered to him, remains unaltered.

The voter having received his ballot paper, is to proceed at once to one of the compartments, is there secretly to mark his ballot paper, and fold it up so as to conceal the mark or marks which he has made, and so as to leave the official mark visible on the back, and to take it so folded, without showing the front of the paper to any person, to the presiding officer himself (not a clerk, *see* s. 2), show him the official mark, place the ballot paper at once in the ballot box, and immediately leave the station.

The presiding officer must take care that no person interferes with the voter while he is giving his vote, puts into the ballot box any paper which has not the official mark on the back, takes a ballot paper out of the station, or otherwise infringes the provisions of sections 3 and 4. If any person attempts to put into the ballot box any ballot paper which has not the official mark on the back, or to take any ballot paper out of the station, or in any other way to infringe the provisions of sections 3 and 4, the presiding officer should order him to be arrested, or at all events removed (*see* ss. 3 and 9).

33. If a voter accidentally spoils a ballot paper he may Spoilt votes. return it to be cancelled, and may be given another (Rule 28).

34. In three cases only is the ballot paper allowed to be Mode of voting in exceptional cases. Rule 26. marked by any person other than the voter himself, and then only by the presiding officer. These are—

- (1.) Persons incapacitated by blindness or any other physical cause;
- (2.) Jews, if the polling takes place on a Saturday, and they object on religious grounds to mark their votes; and
- (3.) Persons unable to read.

If a voter declares that he is unable to read, he must make before the presiding officer a declaration of inability to read in the form prescribed in the second schedule. This declaration must be read by the presiding officer to the voter, signed by the voter with his mark in the presence of the presiding officer, attested by the presiding officer, and kept by him to be sent to the returning officer (*see* Rule 38).

In any of these three cases the presiding officer, or one of his clerks, is, in the presence of the personation agents, if they

are in attendance (*see* Rule 55), to mark a ballot paper in the way directed by the voter, place it in the ballot box, and enter the name and number of the voter on a list headed "the list of votes marked by presiding officer," mentioning in such list the reason why the vote has been so marked (Rule 26).

It must be remembered that the declaration of secrecy and the penalties under s. 4 apply to votes given under these circumstances.

Tendered votes. 35. The mode of tendering a vote where a person claims to vote after another person has already voted in his name, is prescribed by Rule 27. The register is now made conclusive by s. 7, and therefore no vote can be tendered, except in the case of personation.

Proceedings at close of poll. 36. The presiding officer is not allowed to open the ballot box, which under s. 2 is, at the close of the poll, to be sealed up so as to prevent the introduction of additional ballot papers.

As soon as practicable after the close of the poll, the presiding officer is, in the presence of the personation agents, if any are in attendance, to make up into separate packets the ballot box and the several papers there mentioned, seal the packets with his own seal, and allow the agents, if they wish, to affix their seals, and then, unless he is himself the returning officer, to deliver the several packets, together with the ballot paper account mentioned in Rule 30, to the returning officer (Rule 29). Care should be taken that the several classes of documents mentioned in the different paragraphs of Rule 29 are made up in separate packets, as only some of them are allowed to be subsequently opened by the returning officer.

Counting Votes.

Time of counting. 37. The returning officer is to count the votes as soon as practicable after the close of the poll (Rule 32).

Agents. 38. The candidates are allowed to appoint agents to attend at the counting, but they must give the returning officer notice of the name and address of each agent one clear day before the opening of the poll (Rules 31, 52).

Notice to agents. 39. The returning officer is to give notice to the agents of the time and place of the counting of votes (Rules 32, 52).

Assistants and clerks. 40. The returning officer may, in addition to any clerks, appoint competent persons to assist in counting (Rule 48).

Persons entitled to attend. 41. The persons entitled to be present at the counting are Rules 31, 33, 51, 52. the returning officer, his assistants and clerks, the candidates (Rule 50), and the duly appointed agents of the candidates. No one else is entitled to be present, except with the sanction

of the returning officer. It is obvious that this sanction ought not to be given except for the purpose of assisting the returning officer in the counting. All officers, clerks and agents authorised to attend at the counting must take the declaration of secrecy (Rule 54).

42. Before beginning to count the votes, the returning officer is to open the ballot boxes, count and record the number of papers in each box, so as to check any attempt at fraud, and then mix all the ballot papers together in such a way that it may not be known which papers came out of any particular ballot box (Rule 34). Process of counting.

Directions as to counting the votes will be found in Rule 35. In counting and recording the number of the ballot papers, and also in counting the votes, the returning officer must take care to keep the ballot papers with their faces upwards, and must take all proper precautions to prevent any person from seeing the numbers printed on the backs of the papers (Rule 34).

Provisions are contained in s. 4 as to secrecy at the counting of the votes as well as at the proceedings at the poll.

43. Any ballot paper which has not the official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything except the number printed on the back is written or marked by which the voter can be identified, is to be void and not counted (s. 2). Decision as to the validity of votes.

The power of deciding on the validity of votes rests with the returning officer alone, and cannot be delegated (s. 2). The returning officer is to mark "Rejected" on any ballot paper which he may reject as invalid, and to add "Rejection objected to," if an objection be in fact made by any agent to his decision. The rejected votes are to be classified under different heads (Rule 36). If a vote is rejected on any other ground than those specified in Rule 36, it must be entered under a special head. The returning officer is to make out a report of the rejected papers so classified.

44. The returning officer is prohibited from voting except in the case mentioned in s. 2. In a case of equality of votes, if he cannot vote, he must make a double return. Vote of returning officer.

45. As soon as the result of the poll is ascertained, the returning officer is to declare elected the candidate or candidates for whom the majority of votes have been given, and to return their names to the Clerk of the Crown in Chancery (s. 2). The return is to be made by a certificate endorsed on Declaration of poll and return of writ.

the writ (Rule 44), and may be sent by post. The indenture by which the return was formerly made is abolished.

NOTE.—Care should be taken that there is sufficient time for the return to reach the Clerk of the Crown within the prescribed time, as in the case of *Hurdle v. Waring* 9 C. P. 435, it was held that the return of a member was not made until the writ reached the hands of the Clerk of the Crown. The election of a member for Poole took place on the 3rd February, on the 4th the returning officer endorsed the writ and delivered it to the postmaster at Poole, who forwarded it by the 12.30 morning mail; it reached London about 6 p.m., and was sent to the Clerk of the Crown, where it arrived about 8 o'clock, but after the office was closed, and did not reach the Clerk of the Crown until the morning of the 5th. It was held that the return must be reckoned as having been made on the 5th.

Notice of election.

46. Public notice of the names of the candidates elected and of the total number of votes given for each candidate, is to be given as soon as possible (Rules 45, 46).

Proceedings at close of counting.
Rules 37, 38.

47. Upon the completion of the counting, the returning officer is to seal up in separate packets the counted and rejected ballot papers. He is not to open the packets containing tendered ballot papers, marked copy of register of voters, or counterfoils, but he is, in the presence of the agents, to verify the ballot paper account in manner directed by Rule 37, so as to see that all the ballot papers are accounted for, and that no wrong papers have been introduced, and to make out a report of the result of such verification. The returning officer will finally forward to the Clerk of the Crown in Chancery, as the poll books used to be forwarded (*see* 6 Vic., c. 18, s. 93), his reports made up into a packet and the several packets mentioned in rule 38, taking care to endorse on each packet the description of its contents, the date of the election to which they relate, and the name of the county or borough for which such election was held (Rule 38).

Expenses of Election.

Expenses of election.

48. The necessary expenses of the election will, if properly incurred, be payable as heretofore by the candidates (s. 8). The enactment (2 & 3 W. IV., c. 45, s. 71) which formerly fixed the amount payable to deputy returning officers and poll clerks, has been repealed. The enactments requiring an indenture for the purpose of the return have been repealed,

and by 7 & 8 W. III. c. 25, s. 2, a returning officer is prohibited, under a penalty of £500, from taking any fee or reward for the receipt, return, or execution of any writ.

NOTE.—The expenses of returning officers are now regulated by the Parliamentary Elections Act, 38 & 39 Vic. c. 84, a digest of which will be found at the end; it gives a scale of payment for clerks, presiding officers, the polling stations, printing, conveyances, &c.

II.—MUNICIPAL ELECTIONS.

49. The provisions of the former law with respect to the nomination at municipal elections remain unaltered, except that the form of nomination paper is to be similar to that contained in the second schedule. Application of Act to municipal elections, ss. 20, 21, Rule 64.

The above instructions with respect to Parliamentary elections apply to municipal elections, subject to the modifications mentioned in sections 20, 21, and Rule 64.

The most important of these modifications are as follows :

- (1.) The returning officer is to be the mayor or other person who under the old law presided at the election.
- (2.) The mayor is to provide the polling stations, ballot boxes, stamping instruments, and other necessaries.
- (3.) The day of the poll is not changed by the Act.
- (4.) There is no power to take a room compulsorily.
- (5.) There is no provision made for the appointment of any agents for the candidates.
- (6.) No alteration is made with respect to the burgess roll or ward list.
- (7.) The casting vote of the returning officer is left to the old law.
- (8.) No return is required to be made to the clerk of the Crown, and all ballot papers and documents which in the case of a Parliamentary election are sent to the clerk of the Crown are to be delivered to the town clerk.
- (9.) The expenses of the election will be defrayed as under the old law.

By s. 21, ward assessors are abolished, and the assessors need not be present at elections held before the mayor, but assessors must still be elected for the purpose of the revision of the burgess list.

SCHEDULE.

PARLIAMENTARY ELECTIONS.

TIMES FOR NOMINATION AND POLL.

COUNTIES AND DISTRICT BOROUGHES.

- | | | |
|------------|-----|------------------------------------|
| (Say) July | 1. | Receipt of writ. |
| " | 2. | |
| " | 3. | Last possible day for notice. |
| " | 4. | |
| " | 5. | First possible day for nomination. |
| " | 6. | |
| " | 7. | |
| " | 8. | First possible day for poll. |
| " | 9. | |
| " | 10. | Last possible day for nomination. |
| " | 11. | |
| " | 12. | |
| " | 13. | |
| " | 14. | |
| " | 15. | |
| " | 16. | |
| " | 17. | Last possible day for poll. |

BOROUGHES.

- | | | |
|------------|----|------------------------------------|
| (Say) July | 1. | Receipt of writ. |
| " | 2. | Last possible day for notice. |
| " | 3. | |
| " | 4. | First possible day for nomination. |
| " | 5. | Last possible day for nomination. |
| " | 6. | First possible day for poll. |
| " | 7. | |
| " | 8. | |
| " | 9. | Last possible day for poll. |

N.B.—Sundays, Christmas Day, Good Friday, and any public fast or thanksgiving day are not counted (*see* Rule 56).

REGULATIONS to be observed by Election Agents,
Sub-agents, and others employed in the Election for
the borough (or county) of*

1. No bribe of any kind may be offered or accepted under any circumstances whatever.
2. The giving, providing, or accepting of any meat, drink, entertainment or provision to, for, or from any person is strictly forbidden.
3. Any sort of undue influence, whether open violence, threats of temporal or spiritual injury, or any fraudulent device or contrivance, is strictly forbidden.
4. No one may personate a voter, *i.e.*, apply for a ballot paper in the name of another person, or aid, abet, counsel or procure another person to do so.
5. All payments or contracts for payment of travelling expenses to voters are strictly forbidden; and no public stage or hackney carriages or horses may be hired or let, lent or borrowed, or used for the conveyance of voters.
6. No electors may be employed for any purposes of advertisement, except where a contract is made with an advertisement agent in the ordinary course of his business.
7. The expenses of this election are limited to the sum of £ which must on no account be exceeded.
8. The following persons are prohibited from voting at this election, and no one may on any account induce or procure them or any of them to vote.
 1. *List of names of persons disqualified under s. 37 of the Act of 1883.*
 2. *List of names of persons employed for reward as agents or otherwise in this election, and on that account prohibited under s. 17 of same Act.*
9. No person may publish a false statement of the withdrawal of any candidate.
10. No person may provide any money for any purpose contrary to the C. P. Acts, or to replace any money spent in contravention of the same.
11. No person may corruptly induce or procure a candidate to withdraw.
12. No payment or contract for payment may be made for any bands, torches, flags, banners, cockades, ribbons or other

marks of distinction; and the giving of any cockades, &c., to any inhabitant of this borough [or county] is strictly forbidden.

13. Every bill, placard and poster must bear upon its face the name and address of the printer or publisher.

14. No committee rooms may be taken in or upon any of the following premises :—

- (a) Where the sale by wholesale or retail of any intoxicating liquor is authorised by a licence (whether *on* or *off*).
- (b) Where any intoxicating liquor is sold or is supplied to members of a club, society or association other than a permanent political club.
- (c) Where refreshment of any kind, whether food or drink, is ordinarily sold for consumption on the premises.
- (d) Any part of the premises of any public elementary school in receipt of an annual Parliamentary grant.

But any part of such premises which is ordinarily let for the purpose of chambers or offices, or the holding of public meetings, or of arbitrations, if such part has a separate entrance and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied may be used for committee rooms.

The number of committee rooms at this election is limited to , which number may on no account be exceeded.

15. The names and addresses of the election agent and every sub-agent, and the addresses of their respective offices are, immediately on their respective appointments, to be sent in to the returning officer.

16. No appointments or contracts may be made or entered into except by the election agent or his sub-agent.

17. The election agent alone or his sub-agent may either before, during or after the election, receive payments, advances, or deposits in respect of the election expenses.

18. Every payment above the sum of 40s. made by the election agent or his sub-agent, must be vouched for by a bill stating the particulars, and a receipt must be obtained for the same.

19. No claim against the candidate or his election agent for any election expenses may be paid, unless sent in to the election agent within 14 days of the declaration of the poll.

20. The election agent is required to pay all election

expenses, about which no dispute arises, within 28 days after the declaration of the poll.

21. The election agent may authorise any person to pay petty expenses for stationery, postage, telegrams, &c.; but (1) any such authority must be in writing; (2) the total amount must be named in the authority, and any excess above the sum so named must be paid by the election agent; (3) a statement of the particulars so authorised, together with the bill and receipt of the person authorised, must be sent in to the election agent within the statutory 14 days.

22. A person may pay any small expense legally incurred by himself out of his own money; but such sum may not be repaid to him.

23. The election agent is required to transmit to the returning officer within 35 days after the declaration of the poll—

1. A full return of all election expenses according to Schedule 2 of the Act.
2. A declaration respecting the same according to Schedule 2 of the Act.

FORMS FOR ELECTION PETITIONS.

**.* The following are a few forms of allegations on some of the more important charges on which petitions may be based, which may be found useful as precedents :—*

1. Your petitioner is a person who had a right to vote, and voted at the above election.

2. (States fact of election and result.)

3. And your petitioner says that before and during the said election undue influence was used and intimidation practised by certain persons on behalf of the said A.B. upon or against persons having the right to vote at the said election, in order to induce or compel such persons to vote or refrain from voting at the said election. Undue influence.

4. And your petitioner says that before and during the said election certain persons acting on behalf of the said A.B. by various fraudulent devices and contrivances, impeded, prevented, or otherwise interfered with the free exercise of the franchise by certain voters for the said county having the right to vote at the said election, and thereby compelled, induced, or prevailed upon some of such voters either to give or to refrain from giving their votes at the said election.

5. And your petitioner further says that several persons being voters, in respect of whom undue influence was practised on behalf of the said A. B. voted at the said election.

Voting by
persons
employed for
reward.

6. And your petitioner says that several persons retained or employed for reward by or on behalf of the said A. B. for the purposes of the said election, as agents, clerks, messengers, and in other employments, voted at the said election.

7. And your petitioner claims that there should on a scrutiny be struck off from the number of votes appearing to have been given to the said A. B. at the said election, one vote for every person who voted at the said election, and who shall be proved to have been unduly influenced, or to have been retained or employed for reward as aforesaid.

8. And your petitioner says that a greater number of valid and lawful votes were recorded at the said election for the said C. D. than for the said A. B. (*Down*, 3 O. & H. 115).

Treating after
the election.

That after the said election and return, and within days before the presentation of this petition, the respondent, by himself and by others, with his privity, and on his account, corruptly gave and provided in pursuance of such corrupt practice, meat, drink, entertainment, and provision, on [*date* and *place*], to certain voters on account of such voters having voted for him (*Brecon*, 2 O. & H. 43).

Where notice of
disqualification
given before
the election.

That by reason of the wrongful acts of the respondent and his agents aforesaid, and by reason of each of them, the respondent was disqualified and incapacitated from being elected as a representative for , and his election and return was illegal and void.

Your petitioner did on [*date*] being the day of nomination, cause a notice to be posted in the vicinity of the place of nomination for the said county, and to be advertised in several newspapers published in the said county, and to be extensively posted throughout all parts of the said county, which notice was in the words and figures following [*set out notice*] :

That on [*date*], being the day of polling aforesaid, the petitioner caused a copy of the said notice to be served upon each of the electors before voting for the respondent, or upon a sufficient number of the said electors to have reduced the poll of the respondent below that of the petitioner, and such electors refrained from voting for the respondent.

That a large number of duly qualified electors of the said county duly voted for the petitioner at the said election (*Galway*, 2 O. and H. 46).

That the respondent having, for the purpose of influencing voters at the election, given to certain voters in the said borough, immediately before and at the said election, a right to trap and shoot rabbits, was guilty of corrupt practices, and was disqualified from being a candidate for the said borough, and that all votes given for him after due notice of such disqualification would be thrown away (*Launceston*, 2 O. and H. 129).

Bribery by giving permission to shoot rabbits.

At the said election, certain electors who were dead or absent were personated by their sons or other persons and their votes recorded for the respondent, whereby the respondent obtained votes to which he was not properly entitled, and that the votes so recorded ought now to be struck off the poll.

Personation.

Under the circumstances above mentioned, the respondent obtained an apparent and colourable majority over the petitioner, whereas in truth and fact the petitioner has a majority of votes (*Athlone*, 3 O. & H. 57).

Respondent did by himself and his agents, and other persons on his behalf, for the purpose of unduly and unfairly influencing the said election and of procuring the return of the said candidate thereat, knowingly, deliberately, and of purpose contrary to law, pay and engage to pay money for and on account of the conveyance of voters to the poll (*Bolton*, 2 O. & H. 139).

Paying for conveyance of voters.

Respondent did, &c., unlawfully conspire with, and did designedly, illegally and corruptly induce divers persons in attendance at divers polling stations at the said election, and whose duty it was by law to maintain and aid in maintaining the secrecy of the voting in such stations, and who had made, and had hereafter to make the statutory declaration of secrecy in that behalf, to wilfully, deliberately and of purpose, violate the provisions of the Ballot Act, 1872, and to unlawfully communicate to them the said candidate and his agents, and other persons on his behalf, before the poll was closed, information as to the name and numbers on the register of voters of the electors who had or had not applied for ballot-papers and voted at the said polling stations (*ibid*).

Violating secrecy of poll.

The petition, after stating that the returning officer had returned the respondent as being duly elected by a majority of two votes, alleged that the return of the respondent was undue and erroneous, and that "the said number of 522 votes reported by the returning officer as given for respondent was arrived at by counting as good votes a large number of votes

Voting papers invalid.

which ought not to have been counted, but ought to have been rejected as not being in the terms of the Ballot Act, 1872, by reason :

- (1.) Of the ballot papers so counted not being marked in accordance with the provisions of the Ballot Act, 1872.
- (2.) Of their containing writings or marks by which the votes could be identified.
- (3.) Of their being unmarked or void from uncertainty.

Prayer to
declare seat
vacant.

The petition further alleged that the said X., since the date of the said election, had been appointed and had taken his seat as one of the Lords of the Session.

And the petition prayed that it might be determined "that the respondent was not duly elected on return, and that his election and return were and are wholly null and void; but that the said Y. was duly elected and ought to have been returned as Member of Parliament for the said [constituency], and that the place of Member of Parliament for the said [constituency] is now vacant, or to do otherwise in the premises as to your lordships shall seem proper (*Wigtown*, 2 O. & H. 215).

Irregularities at
election.

That no poll was, in fact, taken at divers polling places in the said borough at the said election.

That at divers other polling places in the said borough the polling at the said election did not commence at eight o'clock of the forenoon, and continue and keep open during the day up to four o'clock in the afternoon, as by law required.

That by reason of the matters aforesaid divers and many voters of the said borough were prevented from voting at the said election.

And that, by reason of the premises, the said election was and is void* (*Hackney*, 2 O. & H. 77).

Irregularity
as to time
of holding
election.

That on Monday, the 27th December, the said sheriff caused notice to be given of an election to be held on Friday, December 31st, being a day sooner than the sixth day from the date of giving of the said notice; and

That the said election was illegally held by said sheriff, because the notice for the said election was not given within two days after the receipt of the writ, and also because six days' notice of the said election was not given, as required by

* A summons taken out by the respondent to show cause why the petition should not be taken off the list, on the ground that it was not a petition within the meaning of P. E. Act, 1868, and did not disclose any facts which would vitiate the return or give the Court jurisdiction, was dismissed.

the statutes in that case made and provided, the said election having taken place sooner than the sixth day from the signing and giving of the said notice (*Longford*, 2 O. & H. 7).*

That one W., who voted at the said election, is not a natural born British subject, that he has not been naturalised, nor has he taken the oath of allegiance in the term of the statute; that he was and is disqualified from voting by the common law of Parliament by reason of alienage, and that his vote ought to be struck off the poll (*Berwick*, 3 O. & H. 178). Vote by alien

FORM FOR AFFIDAVIT ON WITHDRAWAL OF ELECTION PETITION.

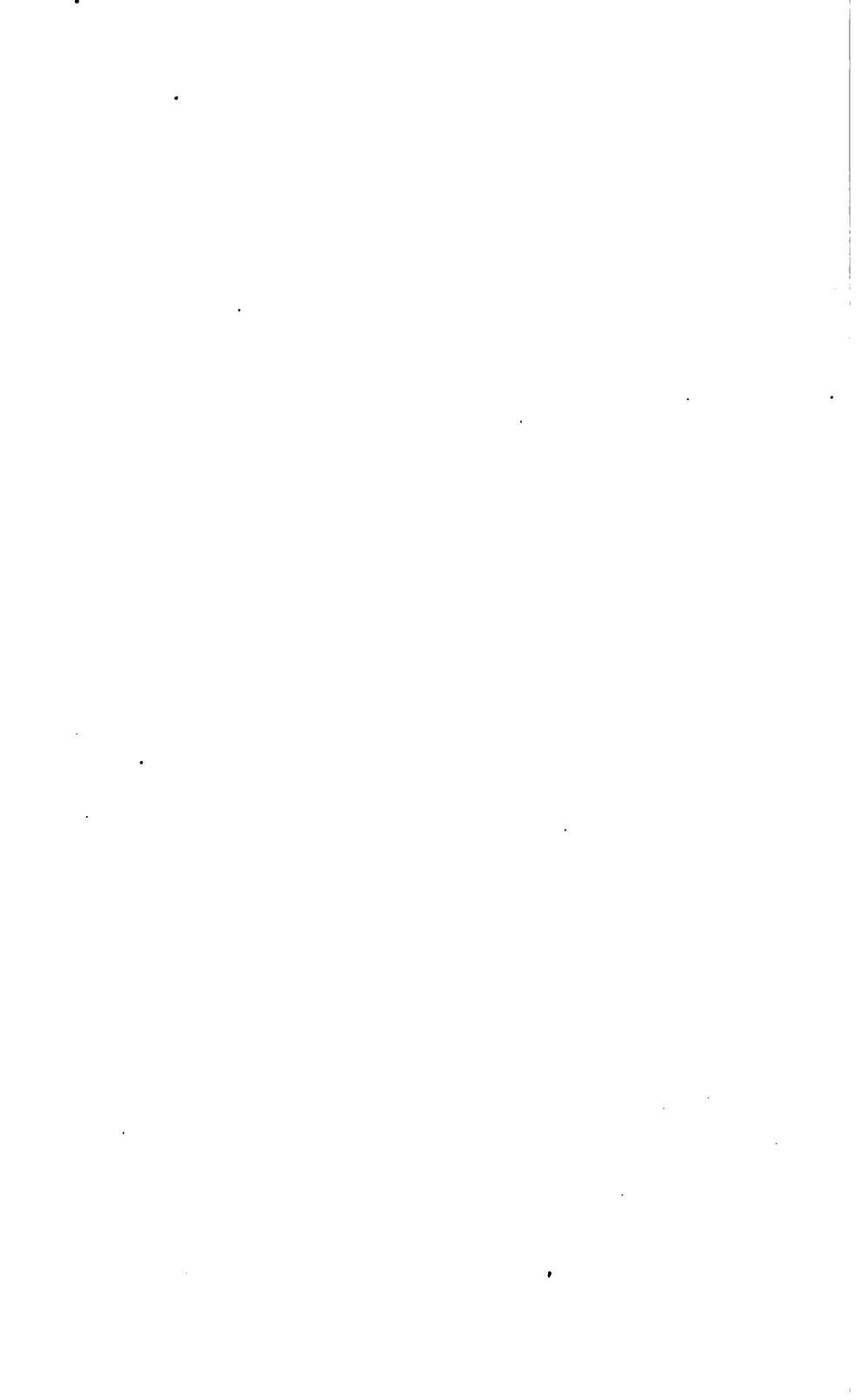
In the *Leominster* and *Nottingham* Cases (5 C. P. D. 553) it was held that the mere form "to the best of my knowledge, information and belief," by itself was "far too loose," and the following form was approved by the Court:—

"To the best of my knowledge, information and belief, from inquiry I have made of all my agents, and speaking positively for myself, the application to withdraw the said petition is not the result of any corrupt arrangement between me or my said agents, and the said petitioners (*or respondents*) or either of them, or in consideration of the withdrawal of any other petition."

The agent's affidavit deposed positively as to himself, and to the best of his knowledge, &c., as to the other members of his firm (*ib.*).

As to what the affidavits should further state, *see* p. 234, *supra*.

* This election was avoided on other grounds, so that this point was not decided. *See* as to the times for giving notice, &c., p. 432.



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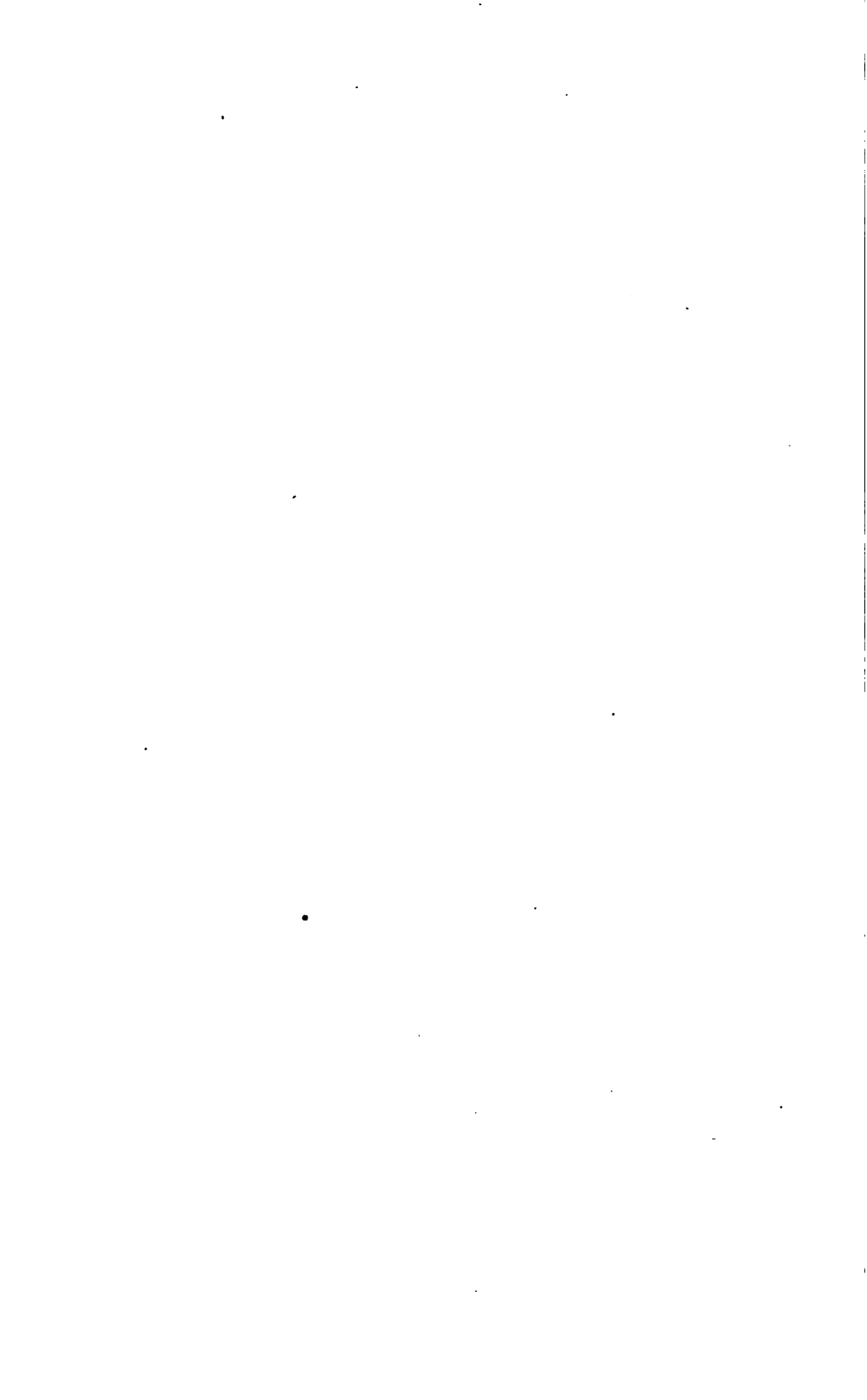
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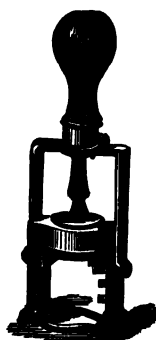
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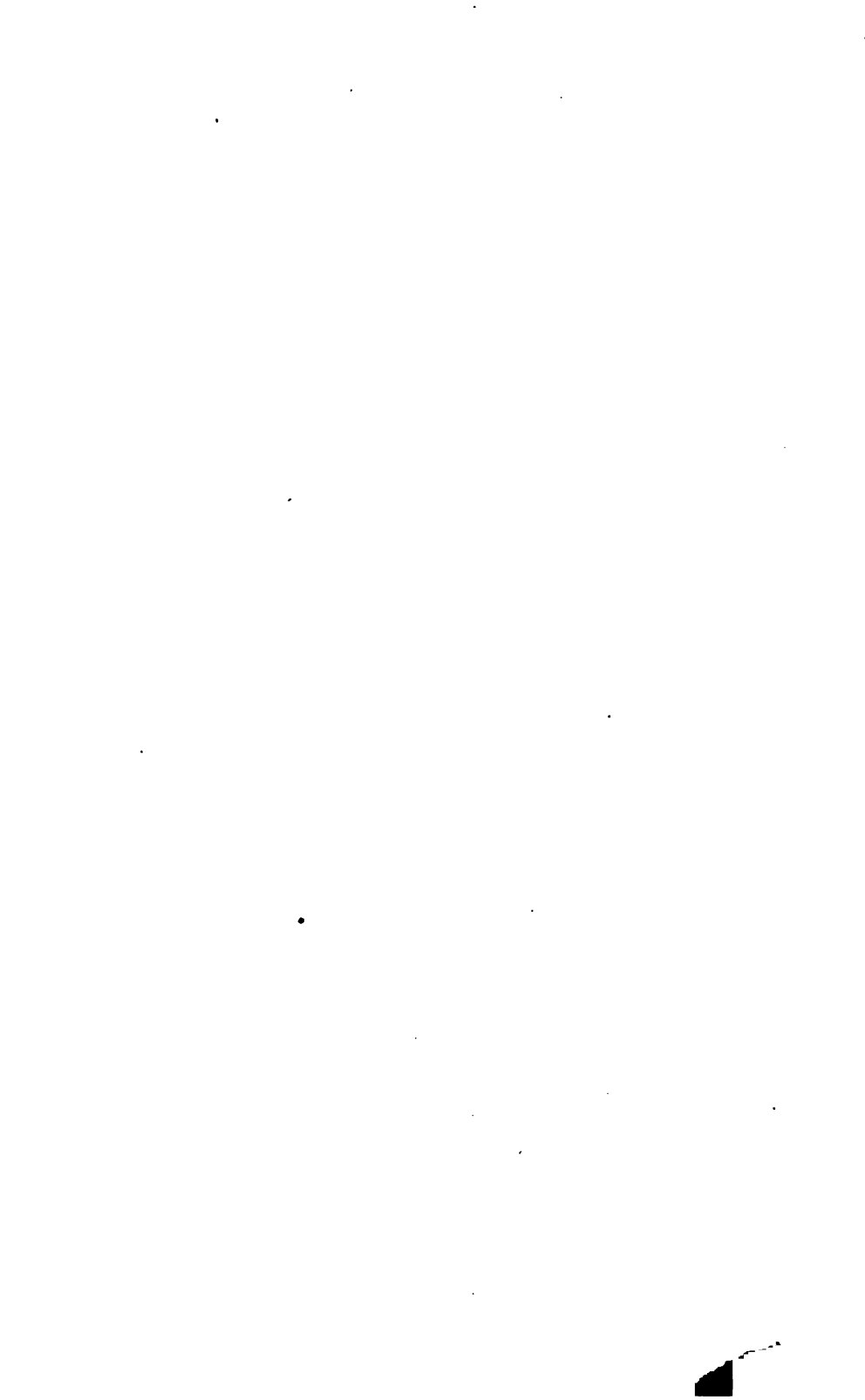
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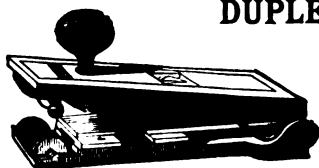
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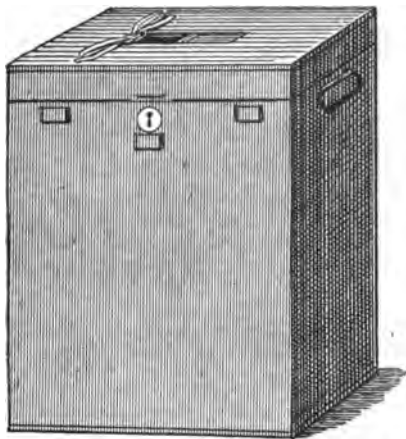
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